

U.S. District Court
Western District of Missouri (Jefferson City)
CIVIL DOCKET FOR CASE #: 2:12-cv-04209-BP
Internal Use Only

Zink et al v. Lombardi et al
Assigned to: District Judge Beth Phillips
Case in other court: Circuit Court of Cole County,
12AC-CC00396
Eighth Circuit, 13-03505
USCA, 13-03664
8th Circuit, 14-01187
8th Circuit, 14-01193
8th Circuit, 14-01200
Eighth Circuit, 14-01388
8th Circuit, 14-01693
Eighth Circuit, 14-01919

Date Filed: 08/01/2012
Date Terminated: 05/16/2014
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Cause: 28:1441 Petition for Removal

Movant

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Date Filed	#	Page	Docket Text
08/01/2012	<u>1</u>		NOTICE OF REMOVAL from Circuit Court of Cole County County, case number 12AC-CC00396, filed by Stephen David Hawke on behalf of George A. Lombardi, David R. Dormire, John Does 2-40, Terry Russell. Filing fee \$ 350, check A6366228 received 8/2/12. (Attachments: # <u>1</u> Exhibit Complaint—part 1, # <u>2</u> Exhibit Complaint—part 2, # <u>3</u> Exhibit Exhibits to Complaint, # <u>4</u> Exhibit Exhibits to Complaint, # <u>5</u> Exhibit Summons, # <u>6</u> Exhibit Motion and Notice)(Hawke, Stephen) (Additional attachment(s) added on 8/2/2012: # <u>7</u> Civil Cover Sheet) (James, Carrie). Modified on 8/2/2012 to reflect receipt of check in JC Clerk's office (Russel, Jeri). (Entered: 08/01/2012)
08/03/2012			RECEIPT number KCMO024041 in the amount of \$350 issued to Missouri State Treasurer. (Martin, Jan) (Entered: 08/03/2012)
08/03/2012	<u>2</u>		Notice of EAP assignment to United States Magistrate Judge Matt J. Whitworth. (Attachments: # <u>1</u> General Order)(James, Carrie) (Entered: 08/03/2012)
08/08/2012	<u>3</u>		MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 8/27/2012 unless otherwise directed by the court. (Spillane, Michael) (Entered: 08/08/2012)

08/14/2012	<u>4</u>	ORDER ON PRETRIAL PROCEDURES entered by Judge Nanette Laughrey. (Kanies, Renea) (Entered: 08/14/2012)
08/14/2012	<u>5</u>	ORDER entered by Judge Nanette Laughrey. Proposed scheduling order due by 9/5/2012. Rule 26 conference due by 8/28/2012. (Kanies, Renea) (Entered: 08/14/2012)
08/20/2012	<u>6</u>	MOTION to remand filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 9/7/2012 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Ex. A, # <u>2</u> Exhibit Ex. B)(Luby, Joseph) (Entered: 08/20/2012)
08/20/2012	<u>7</u>	First MOTION for extension of time to file response/reply as to <u>3</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Elizabeth Unger Carlyle on behalf of All Plaintiffs. Suggestions in opposition/response due by 9/7/2012 unless otherwise directed by the court. (Related document(s) <u>3</u>) (Carlyle, Elizabeth) (Entered: 08/20/2012)
08/21/2012	8	ORDER entered by Judge Nanette Laughrey finding as moot <u>7</u> motion for extension of time to file response. The response to <u>3</u> Motion to Dismiss is currently due 08/27/2012. This is a TEXT ONLY ENTRY. No document is attached. (Kanies, Renea) (Entered: 08/21/2012)
08/27/2012	<u>9</u>	MOTION for leave to file <i>Suggestions in Opposition to Motion to Dismiss</i> filed by John William Simon on behalf of All Plaintiffs. Suggestions in opposition/response due by 9/13/2012 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Suggestions Tendered for Filing)(Simon, John) (Entered: 08/27/2012)
08/28/2012	<u>10</u>	CERTIFICATE OF SERVICE OF INITIAL RULE 26 DISCLOSURES filed by Stephen David Hawke on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Hawke, Stephen) (Entered: 08/28/2012)
08/28/2012	<u>11</u>	CERTIFICATE OF SERVICE OF INITIAL RULE 26 DISCLOSURES filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Luby, Joseph) (Entered: 08/28/2012)
08/29/2012	12	ORDER by Judge Nanette Laughrey GRANTING <u>9</u> Plaintiffs' Motion for Leave to File Suggestions in Opposition to Motion to Dismiss <u>3</u> of Greater than 15 Pages. Plaintiffs' request to file 37 pages in opposition to Motion to Dismiss, exclusive of cover and tables, is GRANTED. Defendants Reply to Plaintiffs Suggestions in Opposition is due on or before September 17, 2012. This is a TEXT ONLY ENTRY. No document is attached. (Kanies, Renea) (Entered: 08/29/2012)
08/29/2012	<u>13</u>	SUGGESTIONS in opposition re <u>3</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Tendered 8/27/2012</i> filed by John William Simon on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen

		L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 9/17/2012 unless otherwise directed by the court (Related document(s) <u>3</u>) (Simon, John) (Entered: 08/29/2012)
09/04/2012	<u>14</u>	PROPOSED SCHEDULING ORDER by David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, John Does 2-40, David R. Dormire, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, George A. Lombardi, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Terry Russell, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Luby, Joseph) (Entered: 09/04/2012)
09/07/2012	<u>15</u>	SUGGESTIONS in opposition re <u>6</u> MOTION to remand filed by Michael Joseph Spillane on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 9/24/2012 unless otherwise directed by the court (Related document(s) <u>6</u>) (Spillane, Michael) (Entered: 09/07/2012)
09/17/2012	<u>19</u>	REPLY SUGGESTIONS to motion re <u>6</u> MOTION to remand filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Related document(s) <u>6</u>) (Luby, Joseph) (Entered: 09/17/2012)
09/17/2012	<u>20</u>	REPLY SUGGESTIONS to motion re <u>3</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Reply Suggestions in Support of Motion to Dismiss</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell. (Related document(s) <u>3</u>) (Spillane, Michael) (Entered: 09/17/2012)
10/05/2012	21	ORDER by Judge Nanette Laughrey. Defendants Lombardi, et al., are requested to update the Court on the issue of mootness regarding the use of propofol in the execution protocol. Defendants are requested to submit a status update on this issue on or before October 15, 2012. Status Report due by 10/15/2012. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 10/05/2012)
10/09/2012	<u>22</u>	ORDER entered by Judge Nanette Laughrey. Plaintiffs' Motion to Remand [Doc. # 6] is DENIED. (Kanies, Renea) (Entered: 10/09/2012)
10/10/2012	<u>23</u>	NOTICE of appearance by Kathryn Parish on behalf of David Zink (Parish, Kathryn) (Entered: 10/10/2012)
10/10/2012	<u>24</u>	NOTICE of appearance by Kathryn Parish on behalf of David M. Barnett (Parish, Kathryn) (Entered: 10/10/2012)
10/10/2012	<u>25</u>	NOTICE of appearance by Kathryn Parish on behalf of Earl Ringo (Parish, Kathryn) (Entered: 10/10/2012)

10/10/2012	<u>26</u>		NOTICE of appearance by Kathryn Parish on behalf of John C. Middleton (Parish, Kathryn) (Entered: 10/10/2012)
10/15/2012	<u>27</u>		STATUS REPORT <i>on mootness</i> by George A. Lombardi. (Spillane, Michael) (Entered: 10/15/2012)
11/08/2012	<u>28</u>		SCHEDULING ORDER entered by Judge Nanette Laughrey: Discovery due by 4/25/2013. Pretrial Conference set for 10/7/2013 08:30 AM in District Courtroom 4A, Jefferson City (NKL) before District Judge Nanette K. Laughrey. Bench Trial set for 10/7/2013 09:00 AM in District Courtroom 4A, Jefferson City (NKL) before District Judge Nanette K. Laughrey. Dispositive Motions due by 5/15/2013. (Attachments: # <u>1</u> Memo on PTC) (Kanies, Renea) (Entered: 11/08/2012)
11/08/2012	<u>29</u>		RULES OF TRIAL entered by Judge Nanette Laughrey. (Kanies, Renea) (Entered: 11/08/2012)
11/29/2012	<u>36</u>		First MOTION for extension of time <i>to file answer</i> filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 12/17/2012 unless otherwise directed by the court. (Spillane, Michael) (Entered: 11/29/2012)
12/03/2012	37		ORDER entered by Judge Nanette Laughrey. Defendant's Motion for Extension of Time to File Answer <u>36</u> is GRANTED. Defendant's Answer is due on or before December 7, 2012. This is a TEXT ONLY ENTRY. No document is attached. (Kanies, Renea) (Entered: 12/03/2012)
12/07/2012	<u>38</u>		ANSWER to Complaint on behalf of George A. Lombardi.(Spillane, Michael) (Entered: 12/07/2012)
12/22/2012	<u>41</u>		CERTIFICATE OF SERVICE by Russell E. Bucklew, Earl Ringo, Michael A. Taylor <i>and Plaintiffs Generally</i> filed by John William Simon on behalf of Plaintiffs Russell E. Bucklew, Earl Ringo, Michael A. Taylor.(Simon, John) (Entered: 12/22/2012)
01/16/2013	<u>43</u>		MOTION for judgment on the pleadings filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 2/4/2013 unless otherwise directed by the court. (Spillane, Michael) (Entered: 01/16/2013)
01/30/2013	<u>44</u>		SUGGESTIONS in opposition re <u>43</u> MOTION for judgment on the pleadings filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 2/19/2013 unless otherwise directed by the court (Related document(s) <u>43</u>) (Luby, Joseph) (Entered: 01/30/2013)
02/04/2013	<u>45</u>		CERTIFICATE OF SERVICE by All Defendants <i>Answers to Interrogatories to Dave Dormire</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Spillane, Michael) (Entered: 02/04/2013)
02/04/2013	<u>46</u>		

			CERTIFICATE OF SERVICE by All Defendants <i>Certificate of Service John Doe # 2 Interrogatories</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Spillane, Michael) (Entered: 02/04/2013)
02/04/2013	<u>47</u>		CERTIFICATE OF SERVICE by All Defendants <i>Certificate of Service Response to Request for Production</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Spillane, Michael) (Entered: 02/04/2013)
02/15/2013	<u>48</u>		REPLY SUGGESTIONS to motion re <u>43</u> MOTION for judgment on the pleadings <i>Reply Suggestions in Support of Motion For Judgment on the Pleadings</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. (Related document(s) <u>43</u>) (Spillane, Michael) (Entered: 02/15/2013)
02/27/2013	<u>50</u>		MOTION for leave to file <i>Notice of Recent Authority</i> filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 3/18/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Case)(Spillane, Michael) (Entered: 02/27/2013)
02/28/2013	<u>51</u>		RESPONSE to motion re <u>50</u> MOTION for leave to file <i>Notice of Recent Authority</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 3/18/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit State's Reply on Motion to Set Execution Date)(Luby, Joseph) (Entered: 02/28/2013)
03/01/2013	52		ORDER entered by Judge Nanette Laughrey. Defendants' Motion for Leave to File <u>50</u> is GRANTED. Defendants may file a separate notice of recent authority of no more than 5 pages, exclusive of exhibits, on or before 3/7/2013. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 03/01/2013)
03/04/2013	<u>53</u>		MOTION for extension of time <i>to serve expert report</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 3/21/2013 unless otherwise directed by the court. (Luby, Joseph) (Entered: 03/04/2013)
03/04/2013	55		ORDER entered by Judge Nanette Laughrey. Plaintiffs' consent Motion for Extension of Time <u>53</u> is GRANTED. Plaintiffs have until March 14, 2013, to disclose Dr. Heath's expert report to Defendants under Rule 26(a)(2). This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 03/04/2013)
03/05/2013	<u>56</u>		NOTICE of filing <i>Notice of Recent Authority</i> by George A. Lombardi re 52 Order on Motion for Leave to File, (Attachments: # <u>1</u> Exhibit Clapper v. Amnesty International)(Spillane, Michael) (Entered: 03/05/2013)
03/06/2013	<u>57</u>		MOTION for leave to file <i>Reponse to Defendants' "Notice of Recent Authority"</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 3/25/2013 unless otherwise directed by the court.

		(Attachments: # <u>1</u> Exhibit Proposed response to Defendants' "Notice of Recent Authority", # <u>2</u> Exhibit Exhibit 1 to Plaintiffs' Proposed Response)(Luby, Joseph) (Entered: 03/06/2013)
03/11/2013	58	ORDER entered by Judge Nanette Laughrey. Plaintiffs' Motion for Leave to File Response <u>57</u> is GRANTED. Plaintiffs may file a Response to Defendants' Notice of Recent Authority <u>56</u> . This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 03/11/2013)
03/11/2013	<u>59</u>	REPLY SUGGESTIONS to motion re <u>43</u> MOTION for judgment on the pleadings <i>Response to Defendants' Notice of Recent Authority</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Attachments: # <u>1</u> Exhibit 1)(Related document(s) <u>43</u>) (Luby, Joseph) (Entered: 03/11/2013)
03/14/2013	<u>60</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>Certificate of Service of Plaintiffs' Expert Designation and Disclosure</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Luby, Joseph) (Entered: 03/14/2013)
03/25/2013	<u>61</u>	ORDER by Judge Nanette Laughary. Defendants Motion for Judgment on the Pleadings <u>43</u> is DENIED.(Smith, Fran) (Entered: 03/25/2013)
03/26/2013	<u>62</u>	CERTIFICATE OF SERVICE by All Defendants re <u>28</u> Scheduling Order, <u>45</u> Certificate of Service <i>Certificate of Service of Supplemental Answers to Interrogatories</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell. Related document: <u>28</u> Scheduling Order, <u>45</u> Certificate of Service filed by John Does 2-40, David R. Dormire, Terry Russell, George A. Lombardi.(Spillane, Michael) (Entered: 03/26/2013)
03/27/2013	<u>63</u>	Joint MOTION for extension of time to complete discovery <i>and amend scheduling order</i> filed by Elizabeth Unger Carlyle on behalf of All Parties. Suggestions in opposition/response due by 4/15/2013 unless otherwise directed by the court. (Carlyle, Elizabeth) (Entered: 03/27/2013)
04/03/2013	65	ORDER entered by Judge Nanette Laughrey. The parties' Joint Motion for Extension of Time <u>63</u> is GRANTED. The following deadlines are amended: Defendants' expert witnesses must be designated and their reports filed by 4/5/2013; discovery motions are due on or before 4/12/2013; discovery must be complete by 5/9/2013; dispositive motions are due on or before 5/29/2013. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 04/03/2013)
04/04/2013	66	ORDER SETTING TELECONFERENCE entered by Judge Nanette Laughrey. A Telephone Conference is set for 4/5/2013 at 02:00 PM regarding a discovery dispute. The parties shall email to the Court at

		<p>Fran_Smith@mow.uscourts.gov, a one page summary of the dispute. The summary shall not exceed one page and should be sent to the Court no later than 2:00 PM on 4/4/2013. The parties shall call dial in number 877-336-1274, access code: 2707681 to participate in the conference. This is a TEXT ONLY ENTRY. No document is attached. (Kanies, Renea) (Entered: 04/04/2013)</p>
04/05/2013	<u>68</u>	<p>MINUTE ENTRY. Teleconference held before Judge Nanette Laughrey on April 5, 2013. Time: 2:00 p.m. 2:15 p.m. Comments: Teleconference held regarding a discovery dispute. The Court ordered Defendants to provide their expert's report to Plaintiffs' counsel. If there remains an issue regarding the details of the information the expert provided Defendants, counsel may contact the Court for another teleconference. The Court sustained Plaintiffs' objection regarding Defendants' refusal to provide all records relating to the protocol on Supremacy Clause grounds, and ordered the documents produced, under seal, for attorneys eyes only, by April 10, 2012. Defendants requested the Court review the document in camera before the document is provided to Plaintiff. The Court denied the request. (Court Reporter: None) TEXT ENTRY ONLY – NO DOCUMENT ATTACHED. (Kanies, Renea) (Entered: 04/05/2013)</p>
04/05/2013	<u>69</u>	<p>CERTIFICATE OF SERVICE by All Defendants re 65 Order on Motion for Extension of Time to Complete Discovery, <i>Certificate of Service of Summary of Factual and Legal Opinions of M3</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell. Related document: 65 Order on Motion for Extension of Time to Complete Discovery.,(Spillane, Michael) (Entered: 04/05/2013)</p>
04/10/2013	<u>72</u>	<p>MOTION to stay re 68 Telephone Conference,,, <i>Order</i> filed by Stephen David Hawke on behalf of All Defendants. Suggestions in opposition/response due by 4/29/2013 unless otherwise directed by the court. (Related document(s) 68) (Hawke, Stephen) (Entered: 04/10/2013)</p>
04/10/2013	<u>73</u>	<p>COPY OF PETITION for writ of mandamus filed with the Eighth Circuit Court of Appeals by George A. Lombardi. (Attachments: # <u>1</u> Exhibit State Statute, # <u>2</u> Exhibit affidavit, # <u>3</u> Exhibit District Court order, # <u>4</u> Exhibit Execution Protocol)(Spillane, Michael) Modified on 4/11/2013 to change docket text to reflect that this is a copy of documents filed at the Court of Appeals (James, Carrie). (Entered: 04/10/2013)</p>
04/11/2013	<u>74</u>	<p>SUGGESTIONS in opposition re <u>72</u> MOTION to stay re 68 Telephone Conference,,, <i>Order</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 4/29/2013 unless otherwise directed by the court (Related document(s) <u>72</u>) (Luby, Joseph) (Entered: 04/11/2013)</p>
04/11/2013	<u>75</u>	<p>NOTICE of filing Case number assigned to Petition for Writ of Mandamus 13-1801, US Court of Appeals re <u>73</u> Petition for writ of mandamus (James, Carrie) (Entered: 04/11/2013)</p>

04/11/2013	76		ORDER entered by Judge Nanette Laughrey. Defendants are ordered to provide Plaintiffs with M3's expert report in accordance with the Court's order of 04/05/2013 68 . This is a TEXT ONLY ENTRY. No document is attached. (Kanies, Renea) (Entered: 04/11/2013)
04/15/2013	77		ORDER SETTING TELECONFERENCE. A Telephone Conference is set for today, 4/15/2013, at 11:30 AM, before District Judge Nanette K. Laughrey re continuing discovery dispute and request for stay. Dial in # 877-336-1828; Access Code: 8503666. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 04/15/2013)
04/15/2013	<u>78</u>		Minute Entry. Proceedings held before District Judge Nanette K. Laughrey: TELEPHONE CONFERENCE held on 4/15/2013. To order a transcript of this hearing please contact Tania Lock, 573-556-7558. (Lock, Tania) (Entered: 04/15/2013)
04/16/2013	79		ORDER entered by Judge Nanette Laughrey. Defendants are requested to provide a copy of the full execution protocol to the Court for in camera review by 4/18/2013. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 04/16/2013)
04/16/2013	80		ORDER SETTING TELECONFERENCE. A Telephone Conference is set for 4/17/2013, at 11:30 AM, before District Judge Nanette K. Laughrey re continuing discovery dispute and request for stay. Dial in # 877-336-1828; Access Code: 8503666. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 04/16/2013)
04/17/2013	<u>81</u>		Minute Entry. Proceedings held before District Judge Nanette K. Laughrey: TELEPHONE CONFERENCE held on 4/17/2013. Court taking matter under advisement. To order a transcript of this hearing please contact Katie Wirt, 816-512-5608. (Russel, Jeri) (Entered: 04/17/2013)
04/18/2013	82		ORDER entered by Judge Nanette Laughrey. On the basis of Defendants' statement during the phone conference of 4/17/13 that a redacted protocol was produced during discovery in the <i>Ringo</i> case, Defendants are requested to produce a copy of the redacted protocol supplied in <i>Ringo</i> for the Court's review in camera. The redacted protocol shall be supplied to the Court on or before 4/22/13. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) Modified on 4/18/2013 to correct conference date (Russel, Jeri). (Entered: 04/18/2013)
04/18/2013			NOTICE OF DOCKET MODIFICATION. A modification has been made to the docket entry filed on 04/18/13 as Document No. 82, Order. Docket text was amended to correct date of pretrial conference. This is a text entry only – no document is attached. (Russel, Jeri) (Entered: 04/18/2013)
04/18/2013	<u>83</u>		MOTION for protective order filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 5/6/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Exhibit to Motion For Protective Order)(Spillane, Michael) (Entered: 04/18/2013)
04/22/2013	<u>84</u>		MOTION to compel <i>expert report of M3 or to bar his testimony</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 5/9/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit 1 – Professional Services Agreement, # <u>2</u> Exhibit 2 – Memo or Email

		from M3, # <u>3</u> Exhibit 3 – Defendant Dormire Answers to Interrogatories, # <u>4</u> Exhibit 4 – "Summary of Facts and Opinions" of M3, # <u>5</u> Exhibit 5 – "Preparation and Administration of Chemicals for Lethal Injection", # <u>6</u> Exhibit 6 – Report of Mark J.S. Heath, M.D.)(Luby, Joseph) (Entered: 04/22/2013)
04/25/2013	<u>85</u>	SUGGESTIONS in opposition re <u>83</u> MOTION for protective order filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 5/13/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit 1 – Defendants' Response to Plaintiffs' Request for Production of Documents)(Related document(s) <u>83</u>) (Luby, Joseph) (Entered: 04/25/2013)
04/25/2013	86	ORDER SETTING TELECONFERENCE entered by Judge Nanette Laughrey. A Telephone Conference is set for 4/25/2013 at 01:00 PM regarding the death penalty protocol. The parties shall call dial in # 877-336-1828; access code: 8503666, to participate. (Kanies, Renea) (Entered: 04/25/2013)
04/25/2013	<u>87</u>	DESIGNATION <i>Withdrawal of Designation of Expert Witness</i> by All Defendants filed by Susan D. Boresi on behalf of Defendants George A. Lombardi, David R. Dormire, John Does 2-40, Terry Russell.(Boresi, Susan) (Entered: 04/25/2013)
04/25/2013	88	MINUTE ENTRY. Teleconference held before Judge Nanette Laughrey on April 25, 2013. Time: 1:02 p.m. 1:10 p.m. Comments: Teleconference held regarding the Courts Order of April 5, 2013, compelling discovery of the execution protocol. Due to the complicated procedural posture of Defendants' Appeal of the April 5th Order and Defendants' Motion for Stay Pending Appeal, the Court proposes the following: 1) Defendants dismiss the Appeal and related Motion for Stay; 2) the Court vacates the April 5th Order; and 3) the Court will address Defendants' Motion for a Protective Order on the basis of the parties' agreement that it contains the relevant arguments with regards to production of the protocol. Regarding Plaintiffs' Motion to Compel M3's Expert Witness Report, the Court finds the motion to be moot without prejudice in light of Defendants' redesignation of M3 as fact witness only, with the understanding that objections to M3's testimony may be raised at trial or on summary judgment. The Court's Order of April 5, 2013 68 is hereby VACATED. Once the appeal and motion for stay are dismissed, the Court will address Defendants' Motion for protective order. Plaintiff's Motion to Compel <u>84</u> is DISMISSED as moot without prejudice. Appearances: Plaintiff by: Elizabeth Carlyle, Joseph Luby, and John Simon. Defendants by: Susan Boresi, Michael Spillane and David Hansen. Court Reporter. Katie Wirt. CRD: Renea Kanies (TEXT ENTRY ONLY – NO DOCUMENT ATTACHED) To order a transcript of this hearing please contact Katie Wirt, 816-512-5608. (Kanies, Renea) (Entered: 04/25/2013)
04/26/2013	<u>89</u>	CERTIFICATE OF SERVICE by All Defendants filed by Michael Joseph Spillane on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell.(Spillane, Michael) (Entered: 04/26/2013)

04/26/2013	<u>90</u>		RESPONSE to motion re <u>72</u> MOTION to stay re 68 Telephone Conference,,, <i>Order</i> filed by Stephen David Hawke on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 5/13/2013 unless otherwise directed by the court (Hawke, Stephen) (Entered: 04/26/2013)
04/29/2013	91		ORDER entered by Judge Nanette Laughrey. Pursuant to Defendants' Response of 4/26/13 [Doc. # 90], Defendants' Motion to Stay <u>72</u> is dismissed as moot. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 04/29/2013)
04/30/2013	<u>92</u>		MOTION for extension of time to complete discovery filed by Joseph Luby on behalf of All Parties. Suggestions in opposition/response due by 5/17/2013 unless otherwise directed by the court. (Luby, Joseph) (Entered: 04/30/2013)
05/02/2013	93		ORDER entered by Judge Nanette Laughrey. The Parties' Joint Motion for Extension of Time <u>92</u> is GRANTED. The deadlines are amended as follows: Expert witness depositions are due on or before 6/8/13; Discovery deadline is extended to 6/8/13; Discovery–related motions are due on or before 6/1/13; Dispositive Motions are due on or before 6/28/13. The pre–trial conference memo remains due on 9/30/13, and trial is still set for 10/7/13. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 05/02/2013)
05/02/2013	<u>94</u>		MOTION for protective order <i>concerning identity of execution team members</i> filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 5/20/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Exhibit 1 (Letter and Documents), # 2 Exhibit 2 (Proposed protective order deleted)(Spillane, Michael) Modified on 5/9/2013 to delete attachment #2 proposed protective order(Lock, Tania). (Entered: 05/02/2013)
05/06/2013	<u>96</u>		NOTICE of filing Judgment and mandate from 8th Circuit Court of Appeals on appeal 13–1801, In Re: George Lombardi (Attachments: # <u>1</u> Mandate)(James, Carrie) (Entered: 05/06/2013)
05/08/2013	<u>98</u>		SUGGESTIONS in opposition re <u>94</u> MOTION for protective order <i>concerning identity of execution team members</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 5/28/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit 1 – Professional Medical Services Agreement, # <u>2</u> Exhibit 2 – "Summary of Facts and Opinions of M3", # <u>3</u> Exhibit 3 – Supplemental Interrogatory Response of M3, # <u>4</u> Exhibit 4 – Plaintiffs' proposed protective order of Feb. 21, 2013, # <u>5</u> Exhibit 5 – "Preparation and Administration of Chemicals for Lethal Injection")(Related document(s) <u>94</u>) (Luby, Joseph) (Entered: 05/08/2013)
05/09/2013			NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 05/02/2013 as Document No. 94–2, Proposed Protective Order. The proposed order attached to the motion has been deleted. Per Administrative Procedures any proposed orders are to be emailed to the

		Courtroom Deputy in Word format. Notified attorney by email. This is a text entry only – no document is attached. (Lock, Tania) (Entered: 05/09/2013)
05/21/2013	<u>99</u>	REPLY SUGGESTIONS to motion re <u>94</u> MOTION for protective order <i>concerning identity of execution team members</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. (Attachments: # <u>1</u> Exhibit ABA & AMA documents, # <u>2</u> Exhibit Section 546.720)(Related document(s) <u>94</u>) (Spillane, Michael) (Entered: 05/21/2013)
05/29/2013	<u>100</u>	Joint MOTION for extension of time to complete discovery <i>and for extensions of related deadlines</i> filed by Joseph Luby on behalf of All Parties. Suggestions in opposition/response due by 6/17/2013 unless otherwise directed by the court. (Luby, Joseph) (Entered: 05/29/2013)
05/31/2013	<u>101</u>	ORDER entered by Judge Nanette Laughrey. Defendant's Motion for a Protective Order <u>83</u> is GRANTED in part and DENIED in part.(Smith, Fran) (Entered: 05/31/2013)
06/05/2013	<u>102</u>	ORDER entered by Judge Nanette Laughrey. The parties' Joint Motion for Extension of Time <u>100</u> is GRANTED. The discovery motion deadline shall be extended until 23 days after the Court resolves the pending protective order motion regarding M3 <u>94</u> ; the discovery completion deadline shall be extended until 30 days after the Court resolves the motion; dispositive motions shall be due 50 days after the Court resolves the motion. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 06/05/2013)
06/07/2013	<u>103</u>	CERTIFICATE OF SERVICE by All Defendants <i>Defendant's Certificate of Service of Execution Protocol Pages Required by Court Order</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Spillane, Michael) (Entered: 06/07/2013)
06/18/2013	<u>104</u>	ORDER entered by Judge Nanette Laughrey. Defendants' Motion for Protective Order <u>94</u> is DENIED as it relates to the identity of M3 but GRANTED as it relates to the identity of the other members of the execution team.(Smith, Fran) (Entered: 06/18/2013)
06/25/2013	<u>105</u>	DESIGNATION <i>of witnesses stating M3 and other members of the execution team will not be called as defense witnesses</i> by David R. Dormire. (Spillane, Michael) (Entered: 06/25/2013)
06/27/2013	<u>106</u>	MOTION for protective order <i>concerning identities of members of the execution team</i> filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 7/15/2013 unless otherwise directed by the court. (Spillane, Michael) (Entered: 06/27/2013)
06/28/2013	<u>107</u>	SUGGESTIONS in opposition re <u>106</u> MOTION for protective order <i>concerning identities of members of the execution team</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 7/15/2013 unless

		otherwise directed by the court (Related document(s) <u>106</u>) (Luby, Joseph) (Entered: 06/28/2013)
07/01/2013	<u>108</u>	MOTION for discovery <i>for leave to disclose sealed documents to expert, and to utilize depositions from previous litigation</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 7/18/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A – Protective order from Ringo v. Lombardi)(Luby, Joseph) (Entered: 07/01/2013)
07/08/2013	<u>109</u>	NOTICE to take deposition of M2 filed by John William Simon on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Simon, John) (Entered: 07/08/2013)
07/17/2013	<u>110</u>	CERTIFICATE OF SERVICE by All Defendants filed by Susan D. Boresi on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Boresi, Susan) (Entered: 07/17/2013)
07/19/2013	<u>111</u>	CERTIFICATE OF TRANSMISSION OF DEPOSITION Taken on July 11, 2013 of M3 (Martin, Jan) (Entered: 07/19/2013)
07/23/2013	<u>112</u>	ORDER entered by Judge Nanette Laughrey. Defendant's Motion for Protective Order concerning identities of members of the execution team <u>106</u> is GRANTED. Although Plaintiffs object to language in Paragraph 6 that they consider overbroad, the Court determines that it is appropriate if implemented by the parties as stated. If the Court determines at a later time that this language is interfering with the litigation process, the Court will amend the order to correct the situation.(Smith, Fran) (Entered: 07/23/2013)
07/23/2013	113	ORDER entered by Judge Nanette Laughrey. Plaintiff's unopposed Motion for Discovery <u>108</u> is GRANTED. Plaintiffs are granted leave to share with their expert the discovery materials that the Court recently ordered to be sealed and revealed to "attorneys eyes only," and to make use of the depositions of M2 and M3 that were designated as "confidential" in the <i>Ringo</i> litigation. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 07/23/2013)
07/25/2013	114	NOTICE OF TELEPHONE CONFERENCE – This is the official notice for this hearing. Telephone Conference set for 8/12/2013 at 11:15 AM in Magistrate Courtroom 3A, Jefferson City (MJW) before Magistrate Judge Matt J. Whitworth. Counsel should call 1–877–336–1829, access code 1233420 to participate in the call. The conference is to discuss possible pre–trial mediation. Questions can be directed to jackie_price@mow.uscourts.gov TEXT ENTRY ONLY. No document attached. (Price, Jackie) (Entered: 07/25/2013)
08/02/2013	<u>115</u>	CERTIFICATE OF SERVICE by All Defendants filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Spillane, Michael) (Entered: 08/02/2013)
08/07/2013	<u>116</u>	MOTION for summary judgment filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 9/3/2013 unless

		otherwise directed by the court (Spillane, Michael) (Entered: 08/07/2013)
08/07/2013	<u>117</u>	SUGGESTIONS in support re <u>116</u> MOTION for summary judgment filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. (Attachments: # <u>1</u> Exhibit Exhibit 1 Execution Protocol, # <u>2</u> Exhibit Exhibit 2 Affidavit of Director, # <u>3</u> Exhibit Exhibit 3 Report of Dr. Heath, # <u>4</u> Exhibit Exhibit 4 Deposition of Dr. Heath)(Related document(s) <u>116</u>) (Spillane, Michael) (Entered: 08/07/2013)
08/08/2013	<u>118</u>	ORDER SETTING MONDAY, OCTOBER 7, 2013, TRIAL DOCKET (TWO–WEEK DOCKET).(Smith, Fran) (Entered: 08/08/2013)
08/12/2013	119	Minute Entry. Proceedings held before Magistrate Judge Matt J. Whitworth: TELEPHONE CONFERENCE held on 8/12/2013. Attorney appearances noted on the record. Court schedules a mediation for September 18 at 10 am in Potosi. The AG's office will take care of the logistics. TEXT ENTRY ONLY – no document attached. To order a transcript of this hearing please contact Jackie Price, 573–636–4015. (Price, Jackie) FTR 11:09 – 11:30 am (Entered: 08/13/2013)
08/13/2013	120	NOTICE OF MEDIATION – This is the official notice for this hearing. Settlement Conference set for 9/18/2013 10:00 AM before Magistrate Judge Matt J. Whitworth at Potosi Correctional Center. TEXT ENTRY ONLY – no document attached. (Price, Jackie) (Entered: 08/13/2013)
08/14/2013	<u>121</u>	NOTICE of filing <i>Notice that the Missouri Supreme Court has set execution dates for Plaintiffs Nicklasson and Franklin</i> by David R. Dormire (Attachments: # <u>1</u> Exhibit Execution Warrants for Plaintiffs Nicklasson & Franklin)(Spillane, Michael) (Entered: 08/14/2013)
08/18/2013	<u>122</u>	MOTION for leave to file excess pages <i>concerning motion to amend the scheduling order</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 9/6/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Motion to amend scheduling order, # <u>2</u> Exhibit 1 – Deposition of Dave Dormire(excerpt), # <u>3</u> Exhibit 2 – Declaration of Mark J.S. Heath, M.D., # <u>4</u> Exhibit 3 – Dormire Answers to Interrogatories, # <u>5</u> Exhibit 4 – Execution Protocol of August 1, 2013, # <u>6</u> Exhibit 5 – Affidavit of Dave Dormire, # <u>7</u> Exhibit 7 – Propfol label)(Luby, Joseph) (Entered: 08/18/2013)
08/19/2013	123	ORDER entered by Judge Nanette Laughrey. Plaintiffs' Motion for Leave to File Excess Pages in Plaintiffs' Motion to Amend Scheduling Order <u>122</u> is GRANTED. Plaintiffs' Motion to Amend Scheduling Order shall not exceed nineteen (19) pages exclusive of facts presented. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 08/19/2013)
08/19/2013	<u>124</u>	MOTION for extension of time <i>Motion to Amend Scheduling Order</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 9/6/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit 1 – Deposition of Dave Dormire (excerpt), # <u>2</u> Exhibit 2 – Declaration of Mark J.S. Heath, M.D., # <u>3</u> Exhibit 3 – Dormire Answers to Interrogatories, # <u>4</u> Exhibit 4 – Lethal Injection Protocol of August 1, 2013, # <u>5</u> Exhibit 5 – Affidavit of Dave Dormire, # <u>6</u> Notice of Exhibit Attachment regarding Exhibit 6 (sealed exhibit) Copy of Sealed Exhibit 6 received in Clerks Office on 8/20/2013, # <u>7</u> Exhibit 7 – Propfol label)(Luby, Joseph) (Entered: 08/19/2013)

		08/19/2013)
08/26/2013	<u>125</u>	Motion for Leave to appear as Amicus Curiae entered by Justin M. Dean on behalf of Fresenius Kabi USA, LLC. (Dean, Justin) Modified on 8/28/2013 to correct docket entry event (Russel, Jeri). (Entered: 08/26/2013)
08/26/2013	<u>126</u>	Suggestions in Support of Motion for Amicus Curiae <u>125</u> entered by Justin M. Dean on behalf of Fresenius Kabi USA, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2)(Dean, Justin) Modified on 8/28/2013 (Russel, Jeri). (Entered: 08/26/2013)
08/28/2013	127	ORDER entered by Judge Nanette Laughrey. Fresenius Kabi USA, LLC's Motion to Appear as Amicus Curiae <u>125</u> is DENIED without prejudice. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 08/28/2013)
08/28/2013	128	ORDER SETTING TELECONFERENCE. A Telephone Conference is set for 8/30/2013, at 09:00 AM, before District Judge Nanette K. Laughrey regarding pending motion (Doc. 124). Dial in number is 877-336-1828; Access Code: 8503666. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 08/28/2013)
08/29/2013	129	AMENDED ORDER SETTING TELECONFERENCE. The Telephone Conference previously set for 8/30/2013, at 09:00 AM, before District Judge Nanette K. Laughrey, is RESET for 3:00 PM, same date. Dial in number is 877-336-1828; Access Code: 8503666. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 08/29/2013)
08/29/2013	<u>130</u>	MOTION for order <i>appointing next friend</i> filed by Elizabeth Unger Carlyle on behalf of Cecil Clayton. Suggestions in opposition/response due by 9/16/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A Letter from Dr. William Logan, # <u>2</u> Exhibit Letter from Dr. Daniel Foster)(Carlyle, Elizabeth) (Entered: 08/29/2013)
08/30/2013	131	MINUTE ENTRY. Teleconference held before Judge Nanette Laughrey on August 30, 2013. Time: 3:00 p.m. 3:07 p.m. Comments: Teleconference held regarding Plaintiffs Motion to Amend Scheduling Order <u>124</u> . The Court stayed the deadline for plaintiffs to respond to the pending motion for summary judgment. Defendants shall respond to the Motion to Amend Scheduling order by September 6, 2013, and plaintiffs reply is due by September 13, 2013. Appearances: Plaintiff by: Elizabeth Carlyle, Joseph Luby, John Simon, and Kathryn Parish. Defendants by: Susan Boresi, Michael Spillane and Matt Briesacher. Court Reporter. Katie Wirt. CRD: Renea Kanies (TEXT ENTRY ONLY NO DOCUMENT ATTACHED) To order a transcript of this hearing please contact Katie Wirt, 816-512-5608. (Matthes, Renea) (Entered: 09/03/2013)
09/06/2013	132	NOTICE OF CANCELLATION: Per Magistrate Whitworth, the mediation scheduled for September 18, 2013 has been CANCELLED. At this time, the mediation is not rescheduled. TEXT ENTRY ONLY – no document attached. (Price, Jackie) (Entered: 09/06/2013)
09/06/2013	<u>133</u>	SUGGESTIONS in opposition re <u>124</u> MOTION for extension of time <i>Motion to Amend Scheduling Order</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry

		Russell. Reply suggestions due by 9/23/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit May 15, 2012 protocol)(Related document(s) <u>124</u>) (Spillane, Michael) (Entered: 09/06/2013)
09/09/2013	<u>134</u>	ORDER entered by Judge Nanette Laughrey. Plaintiff Clayton's Motion for Appointment of Next Friend <u>130</u> is DENIED without prejudice. Plaintiff's Motion is moot because the mediation scheduled for 09/18/2013, is cancelled. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 09/09/2013)
09/09/2013	<u>135</u>	REPLY SUGGESTIONS to motion re <u>124</u> MOTION for extension of time <i>Motion to Amend Scheduling Order</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Attachments: # <u>1</u> Exhibit 8 – Deposition of Mark J.S. Heath, M.D., # <u>2</u> Notice of Exhibit Attachment Notice concerning Exhibit 9 (sealed))(Related document(s) <u>124</u>) (Luby, Joseph) A copy of Sealed Exhibit 9 was received 9/10/2013 and said Exhibit is being maintained in the Clerk's Office. (Martin, Jan). (Entered: 09/09/2013)
09/09/2013	<u>136</u>	MOTION for leave to file <i>Supplement Discovery Disclosures by Adding an Expert Witness</i> filed by Susan D. Boresi on behalf of All Defendants. Suggestions in opposition/response due by 9/26/2013 unless otherwise directed by the court. (Boresi, Susan) (Entered: 09/09/2013)
09/11/2013	<u>137</u>	SUGGESTIONS in support re <u>124</u> MOTION for extension of time <i>Motion to Amend Scheduling Order (Supplemental Reply)</i> filed by Elizabeth Unger Carlyle on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Related document(s) <u>124</u>) (Carlyle, Elizabeth) (Entered: 09/11/2013)
09/19/2013	<u>138</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>Second Interrogatories to Dormire, Second Request for Production</i> filed by Elizabeth Unger Carlyle on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Carlyle, Elizabeth) (Entered: 09/19/2013)
09/24/2013	<u>139</u>	STATUS REPORT by George A. Lombardi. (Attachments: # <u>1</u> Exhibit 9–24–13 execution protocol)(Spillane, Michael) (Entered: 09/24/2013)
09/25/2013	<u>140</u>	ORDER entered by Judge Nanette Laughrey. Plaintiffs Motion to Amend the Scheduling Order <u>124</u> is granted in part and denied in part.(Smith, Fran) (Entered: 09/25/2013)
09/26/2013	<u>141</u>	

		SUGGESTIONS in opposition re <u>136</u> MOTION for leave to file <i>Supplement Discovery Disclosures by Adding an Expert Witness</i> filed by Elizabeth Unger Carlyle on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 10/15/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit A Mo. Sup. Ct. Order)(Related document(s) <u>136</u>) (Carlyle, Elizabeth) (Entered: 09/26/2013)
10/04/2013	<u>142</u>	SUGGESTIONS in support re <u>136</u> MOTION for leave to file <i>Supplement Discovery Disclosures by Adding an Expert Witness Reply Suggestions in Support of Motion</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. (Attachments: # <u>1</u> Exhibit Report of Dr. Dershwitz)(Related document(s) <u>136</u>) (Spillane, Michael) (Entered: 10/04/2013)
10/16/2013	<u>143</u>	MOTION to dismiss for lack of jurisdiction filed by Michael Joseph Spillane on behalf of All Defendants. Suggestions in opposition/response due by 11/4/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Statement of the Governor of Missouri)(Spillane, Michael) (Entered: 10/16/2013)
10/22/2013	<u>144</u>	STATUS REPORT by George A. Lombardi. (Attachments: # <u>1</u> Exhibit 10–18–13 protocol)(Spillane, Michael) (Entered: 10/22/2013)
10/24/2013	<u>145</u>	MOTION for extension of time to file response/reply as to <u>140</u> Order on Motion for Extension of Time, <u>143</u> MOTION to dismiss for lack of jurisdiction filed by Elizabeth Unger Carlyle on behalf of All Plaintiffs. Suggestions in opposition/response due by 11/12/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit 1 Press release)(Related document(s) <u>140</u> , <u>143</u>) (Carlyle, Elizabeth) (Entered: 10/24/2013)
10/25/2013	<u>146</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>Third Set of Interrogatories to Defendant Dormire and Third Request for Production of Documents to All Defendants</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Luby, Joseph) (Entered: 10/25/2013)
11/08/2013	<u>147</u>	MOTION for leave to file <i>Amended Complaint</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 11/25/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A – Amended Complaint, # <u>2</u> Exhibit A1 – Nixon Press Release, # <u>3</u> Exhibit A2 – Execution Protocol 10–18–2013, # <u>4</u> Exhibit A3 – Dept of Corrections Press Release, # <u>5</u> Exhibit A4 – Dershwitz Report, # <u>6</u> Exhibit A5 – Declaration of Mark Heath, # <u>7</u> Exhibit A6 – Affidavit of Larry Sasich, # <u>8</u> Exhibit B – Order in Hill (Ga.))(Luby, Joseph) (Entered: 11/08/2013)
11/08/2013	<u>148</u>	

		SUGGESTIONS in opposition re <u>143</u> MOTION to dismiss for lack of jurisdiction filed by Elizabeth Unger Carlyle on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 11/25/2013 unless otherwise directed by the court (Related document(s) <u>143</u>) (Carlyle, Elizabeth) (Entered: 11/08/2013)
11/09/2013	<u>149</u>	MOTION to intervene filed by Anthony E. Rothert on behalf of Larry C. Flynt. Suggestions in opposition/response due by 11/29/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> proposed motion to unseal, # <u>2</u> proposed suggestions in support of motion to unseal, # <u>3</u> Ex. A to suggestions in support of motion to unseal, # <u>4</u> Ex. B to suggestions in support of motion to unseal)(Attorney Anthony E. Rothert added to party Larry C. Flynt(pty:mov))(Rothert, Anthony) (Entered: 11/09/2013)
11/09/2013	<u>150</u>	SUGGESTIONS in support re <u>149</u> MOTION to intervene filed by Anthony E. Rothert on behalf of Movant Larry C. Flynt. (Attachments: # <u>1</u> Exhibit Ex. A, # <u>2</u> Exhibit Ex. B)(Related document(s) <u>149</u>) (Rothert, Anthony) (Entered: 11/09/2013)
11/11/2013	<u>151</u>	NOTICE of appearance by Grant R. Doty on behalf of Larry C. Flynt (Attorney Grant R. Doty added to party Larry C. Flynt(pty:mov))(Doty, Grant) (Entered: 11/11/2013)
11/15/2013	<u>152</u>	REPLY SUGGESTIONS to motion re <u>143</u> MOTION to dismiss for lack of jurisdiction filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. (Related document(s) <u>143</u>) (Spillane, Michael) (Entered: 11/15/2013)
11/17/2013	<u>153</u>	MOTION for leave to file <i>Sur–reply in opposition to motion to dismiss</i> filed by Elizabeth Unger Carlyle on behalf of All Plaintiffs. Suggestions in opposition/response due by 12/5/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Sur–reply in opposition to motion to dismiss, # <u>2</u> Exhibit Exhibit to sur–reply Affidavit of Dave Dormire)(Carlyle, Elizabeth) (Entered: 11/17/2013)
11/18/2013	154	ORDER entered by Judge Nanette Laughrey. Plaintiffs' Motion for Extension of Time to File Motion for Leave to File Amended Complaint and to Respond to Motion to Dismiss <u>145</u> is GRANTED. The Court will consider Plaintiffs' Motion for Leave to File Amended Complaint [Doc. 147] to be timely filed. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 11/18/2013)
11/18/2013	155	ORDER entered by Judge Nanette Laughrey. Plaintiffs' Motion for Leave to File a Sur–Reply <u>153</u> is GRANTED. Plaintiffs may file a sur–reply to Defendants' Motion to Dismiss on or before 11/21/2013. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 11/18/2013)
11/18/2013	<u>156</u>	SUGGESTIONS in opposition re <u>143</u> MOTION to dismiss for lack of jurisdiction <i>Sur–reply</i> filed by Elizabeth Unger Carlyle on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin,

		Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 12/5/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Exhibit–Affidavit of Dave Dormire)(Related document(s) <u>143</u>) (Carlyle, Elizabeth) (Entered: 11/18/2013)
11/18/2013	<u>157</u>	MOTION to stay <i>execution of Plaintiff Joseph Franklin</i> filed by Joseph Luby on behalf of Joseph Paul Franklin. Suggestions in opposition/response due by 12/5/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit 1 – Execution Protocol, # <u>2</u> Exhibit 2 – 2 – MDOC Press Release, # <u>3</u> Exhibit 3 – Sasich Affidavit, # <u>4</u> Exhibit 4 – Heath Declaration, # <u>5</u> Exhibit 5 – Dershwitz Report, # <u>6</u> Exhibit 6 – "Prescriptions", # <u>7</u> Exhibit 7 – Laboratory Analysis, # <u>8</u> Exhibit 8 – Sasich Supplemental Declaration, # <u>9</u> Exhibit 9 – Hill order (Ga.), # <u>10</u> Exhibit 10 – Dormire Affidavit)(Luby, Joseph) (Entered: 11/18/2013)
11/19/2013	<u>158</u>	SUGGESTIONS in opposition re <u>157</u> MOTION to stay <i>execution of Plaintiff Joseph Franklin</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 12/6/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Gievance procedure & affidavit, # <u>2</u> Exhibit Supreme Court pleadings and order)(Related document(s) <u>157</u>) (Spillane, Michael) (Entered: 11/19/2013)
11/19/2013	<u>159</u>	SUGGESTIONS in opposition re <u>157</u> MOTION to stay <i>execution of Plaintiff Joseph Franklin correcting typographical mistake</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 12/6/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Affidavit & grievance procedure, # <u>2</u> Exhibit Missouri Supreme Court pleadings and order)(Related document(s) <u>157</u>) (Spillane, Michael) (Entered: 11/19/2013)
11/19/2013	<u>160</u>	SUGGESTIONS in support re <u>157</u> MOTION to stay <i>execution of Plaintiff Joseph Franklin</i> filed by Jennifer Herndon on behalf of Plaintiff Joseph Paul Franklin. (Attachments: # <u>1</u> Exhibit Text of Bill, # <u>2</u> Exhibit New York Times Article)(Related document(s) <u>157</u>) (Herndon, Jennifer) (Entered: 11/19/2013)
11/19/2013	<u>161</u>	REPLY SUGGESTIONS to motion re <u>157</u> MOTION to stay <i>execution of Plaintiff Joseph Franklin</i> filed by Joseph Luby on behalf of Plaintiff Joseph Paul Franklin. (Attachments: # <u>1</u> Exhibit 1 – Reply in Support of Renewed Motion to Set Execution Date)(Related document(s) <u>157</u>) (Luby, Joseph) (Entered: 11/19/2013)
11/19/2013	<u>162</u>	SUGGESTIONS in opposition re <u>157</u> MOTION to stay <i>execution of Plaintiff Joseph Franklin Suggestions in Opposition to Supplemental Suggestions in Support of Motion for stay of execution</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 12/6/2013 unless otherwise directed by the court (Related document(s) <u>157</u>) (Spillane, Michael) (Entered: 11/19/2013)
11/19/2013	<u>163</u>	ORDER entered by Judge Nanette Laughrey. The Court DENIES Defendants' Motion to Dismiss <u>143</u> . Franklin's Motion for Stay of Execution <u>157</u> is

		GRANTED. Modified on 11/19/2013 to remove Text Entry only text. Document was attached during filing (Williams, Karyn). (Entered: 11/19/2013)
11/19/2013	<u>164</u>	NOTICE OF APPEAL by John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. Filing fee \$ 455, receipt number 0866–3741476. (Hawke, Stephen) (Entered: 11/19/2013)
11/19/2013	<u>165</u>	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>164</u> Notice of Appeal. (Jones, Robin) (Entered: 11/19/2013)
11/19/2013	<u>166</u>	USCA Case Number from Eighth Circuit Court of Appeals is 13–3505 for <u>164</u> Notice of Appeal filed by John Does 2–40, David R. Dormire, Terry Russell and George A. Lombardi. No briefing schedule is issued at this time. (Jones, Robin) (Entered: 11/19/2013)
11/20/2013	<u>167</u>	MOTION to stay <i>Renewed Motion for Stay of Execution</i> filed by Joseph Luby on behalf of Joseph Paul Franklin. Suggestions in opposition/response due by 12/9/2013 unless otherwise directed by the court. (Luby, Joseph) (Entered: 11/20/2013)
11/20/2013	<u>168</u>	ORDER of US COURT OF APPEALS as to <u>164</u> Notice of Appeal filed by John Does 2–40, David R. Dormire, Terry Russell, George A. Lombardi (Bax, Laura) (Entered: 11/20/2013)
11/20/2013	<u>169</u>	ORDER of US COURT OF APPEALS as to <u>164</u> Notice of Appeal filed by John Does 2–40, David R. Dormire, Terry Russell, George A. Lombardi (Bax, Laura) (Entered: 11/20/2013)
11/20/2013	<u>170</u>	ORDER entered by Judge Nanette Laughrey. Larry Flynt's Motion to Intervene <u>149</u> and Franklin's Renewed Motion for Stay of Execution <u>167</u> are denied as moot.(Smith, Fran) (Entered: 11/20/2013)
11/20/2013	<u>171</u>	Appeal Remark re <u>164</u> Notice of Appeal : Supreme Court Order denying stay of execution (James, Carrie) (Entered: 11/20/2013)
11/20/2013	<u>172</u>	USCA Judgment as to <u>164</u> Notice of Appeal filed by John Does 2–40, David R. Dormire, Terry Russell, George A. Lombardi This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (James, Carrie) (Entered: 11/20/2013)
11/20/2013	<u>173</u>	MANDATE of US COURT OF APPEALS as to <u>164</u> Notice of Appeal filed by John Does 2–40, David R. Dormire, Terry Russell, George A. Lombardi with mandate issued on 11/20/13. (James, Carrie) (Entered: 11/20/2013)
11/20/2013	174	ORDER SETTING TELECONFERENCE. A Telephone Conference is set for 11/26/2013, at 11:00 AM, before District Judge Nanette K. Laughrey. Dial in number is 877–336–1274; Access Code: 2707681. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 11/20/2013)
11/20/2013	175	AMENDED ORDER SETTING TELECONFERENCE. A Telephone Conference is set for 11/26/2013, at 11:00 AM, before District Judge Nanette K. Laughrey. Oral Argument will be held on Plaintiffs' Motion to Amend. Dial in number is 877–336–1274; Access Code: 2707681. This is a TEXT ONLY

			ENTRY. No document is attached.(Smith, Fran) (Entered: 11/20/2013)
11/22/2013	<u>176</u>		NOTICE of appearance by Andrew Tyler Bailey on behalf of All Defendants (Attorney Andrew Tyler Bailey added to party John Does 2–40(pty:dft), Attorney Andrew Tyler Bailey added to party David R. Dormire(pty:dft), Attorney Andrew Tyler Bailey added to party George A. Lombardi(pty:dft), Attorney Andrew Tyler Bailey added to party Terry Russell(pty:dft))(Bailey, Andrew) (Entered: 11/22/2013)
11/22/2013	<u>177</u>		MOTION for reconsideration re <u>170</u> Order on Motion to Intervene, Order on Motion to Stay filed by Anthony E. Rothert on behalf of Larry C. Flynt. Suggestions in opposition/response due by 12/9/2013 unless otherwise directed by the court. (Related document(s) <u>170</u>) (Rothert, Anthony) (Entered: 11/22/2013)
11/25/2013	<u>178</u>		SUGGESTIONS in opposition re <u>147</u> MOTION for leave to file <i>Amended Complaint</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 12/12/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Grievance Materials, # <u>2</u> Exhibit Lab results, # <u>3</u> Exhibit Article, # <u>4</u> Exhibit Federal Orders, # <u>5</u> Exhibit Missouri Supreme Court pleadings and order)(Related document(s) <u>147</u>) (Spillane, Michael) (Entered: 11/25/2013)
11/25/2013	<u>179</u>		REPLY SUGGESTIONS to motion re <u>147</u> MOTION for leave to file <i>Amended Complaint</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Related document(s) <u>147</u>) (Luby, Joseph) (Entered: 11/25/2013)
11/26/2013	181		MINUTE ENTRY. Teleconference held before Judge Nanette Laughrey on November 26, 2013. Time: 11:05 a.m. to 11:25 a.m. Comments: Teleconference held regarding Plaintiffs' Motion to Amend the Complaint <u>147</u> . Plaintiffs reiterated arguments made in their pleadings in support of amending their complaint. Defendants argued they had not waived the argument that Plaintiffs failed to exhaust administrative remedies, but conceded that Defendants would not stay scheduled executions in the event Plaintiffs filed grievances through the administrative process. The Court found that Defendants waived their exhaustion of remedies argument. Defendants argued that the Court did not have subject matter jurisdiction to grant Plaintiffs' motion to amend their complaint. The Court found it still had subject matter jurisdiction over Plaintiffs' claims and remarked that the Eighth Circuit had not addressed the Court's subject matter jurisdiction when it vacated the Court's stay of execution of Franklin. Defendants also argued an amended complaint would be futile. Plaintiffs argued that just because the Eighth Circuit did not find sufficient evidence at the time of Franklin's execution to justify a stay, does not mean that Plaintiffs would never find sufficient evidence given adequate discovery procedures. The Court found Defendants made no showing that the amended complaint would be futile. The Court also found Defendants had offered no evidence to believe the Missouri

		<p>Supreme Court's summary opinion denying Franklin's request for a stay of execution was a determination of the merits of Plaintiffs' state law claims. The Court held it would exercise supplemental jurisdiction over Plaintiffs' state law claims so long as a federal claim remained. The Court granted Plaintiffs' Motion to Amend the Complaint. Plaintiffs requested to submit a revised amended complaint to properly address events that have transpired after Plaintiffs originally submitted their proposed amended complaint. The Court permitted Plaintiffs to file a revised amended complaint reflecting the current events. The Court ordered the Parties to file a proposed scheduling order by close of business on 11/28/2013. The Court further ordered Plaintiffs to file any motion for a stay of execution at least 48 hours in advance of a scheduled execution date. A teleconference is set for December 9, 2013, at 2:00 p.m. to discuss disputes arising from the scheduling order or discovery. The Parties will notify the Court if a teleconference is unnecessary. Should a teleconference be necessary to resolve a dispute, by no later than Friday, December 6, 2013, the Parties will email Fran Smith (Fran_Smith@mow.uscourts.gov) with a one page summary of issues to be resolved. Appearances: Plaintiff by: Elizabeth Carlyle, Joseph Luby, John Simon, and Kathryn Parish. Defendants by: Susan Boresi, Michael Spillane, Stephen Hawke, and Andrew Bailey. Court Reporter. Katie Wirt. CRD: Renea Kanies (TEXT ENTRY ONLY – NO DOCUMENT ATTACHED) (Matthes, Renea) (Entered: 11/27/2013)</p>
11/27/2013	<u>180</u>	<p>PROPOSED SCHEDULING ORDER <i>Jointly Proposed Scheduling Order</i> by John E. Winfield. (Luby, Joseph) (Entered: 11/27/2013)</p>
11/27/2013	182	<p>ORDER ENTERED BY JUDGE NANETTE LAUGHREY. A Telephone Conference is set for 12/9/2013 at 02:00 PM. to discuss disputes arising from the scheduling order or discovery. The Parties will notify the Court if a teleconference is unnecessary. Should a teleconference be necessary to resolve a dispute, by no later than Friday, December 6, 2013, the Parties will email Fran Smith (Fran_Smith@mow.uscourts.gov) with a one page summary of issues to be resolved. The parties shall call conference number 877-336-1274; Access Code: 2707681 to participate in the conference. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 11/27/2013)</p>
12/03/2013	<u>183</u>	<p>AMENDED COMPLAINT against All Defendants filed by John William Simon on behalf of All Plaintiffs. (Attachments: # <u>1</u> Exhibit Exhibit 1 Press Release re Another Forthcoming Protocol, # <u>2</u> Exhibit Exhibit 2 Protocol, # <u>3</u> Exhibit Exhibit 3 Press Release Qualifying Protocol, # <u>4</u> Exhibit Exhibit 4 Dershwitz Document Out-of-Time, # <u>5</u> Exhibit Exhibit 5 Heath Declaration, # <u>6</u> Exhibit Exhibit 6 Sasich Original Affidavit, # <u>7</u> Exhibit Exhibit 7 Franklin Respondents' Exhibits in SCOMO, # <u>8</u> Exhibit Exhibit 8 Sasich Supplemental Declaration, # <u>9</u> Envelope Exhibit 9 Partial Response to SLPR Sunshine-Law Request, # <u>10</u> Exhibit Exhibit 10 Partial Response to ACLU Sunshine-Law Request, # <u>11</u> Exhibit Exhibit 11 Partial Response to Senator Bray Sunshine-Law Request, # <u>12</u> Exhibit Exhibit 12 Partial Response to Plaintiffs Edwards & Worthington Sunshine-Law Request, # <u>13</u> Exhibit Exhibit 13 Partial Response to Plaintiffs Bucklew & M.A. Taylor Sunshine-Law Request, # <u>14</u> Exhibit Exhibit 14 AP Report of Signature of Federal Regulation Bill, # <u>15</u> Exhibit Exhibit 15 SCOMO Warrant Against Franklin, # <u>16</u> Exhibit Exhibit 16 Stay in EDMo, # <u>17</u> Exhibit Exhibit 17 Transmittal for Stay in EDMo, # <u>18</u> Exhibit Exhibit 18 8th Cir Order Vacating Stay, # <u>19</u></p>

		<p>Exhibit Exhibit 19 Transmittal for 8th Cir Order Vacating Stay, # <u>20</u> Exhibit Exhibit 20 8th Cir Order Vacating EDMo Stay, # <u>21</u> Exhibit Exhibit 21 Transmittal of 8th Cir Order Vacating Stay, # <u>22</u> Exhibit Exhibit 22 8th Cir Order Denying Rehearing, # <u>23</u> Exhibit Exhibit 23 8th Cir Order Denying Rehearing in EDMo Case, # <u>24</u> Exhibit Exhibit 24 App for Stay in SCOTUS, # <u>25</u> Exhibit Exhibit 25 Transmittal for App for Stay in SCOTUS, # <u>26</u> Exhibit Exhibit 26 App for Stay in SCOTUS re EDMo Case, # <u>27</u> Exhibit Exhibit 27 Transmittal for App for Stay in SCOTUS re EDMo Case, # <u>28</u> Exhibit Exhibit 28 Notice of Electronic Filing of Doc No 167, # <u>29</u> Exhibit Exhibit 29 SCOTUS Denial, # <u>30</u> Exhibit Exhibit 30 SCOTUS Denial in EDMo Case, # <u>31</u> Exhibit Exhibit 31 Transmittal of SCOTUS Denials, # <u>32</u> Exhibit Exhibit 32 E-Mail to Opposing Counsel, # <u>33</u> Exhibit Exhibit 33 New York Times Coverage of Execution While Motion for Stay on Unresolved Grounds Pending, # <u>34</u> Exhibit Exhibit 34 E-Mail from One Opposing Counsel Showing He Has BlackBerry, # <u>35</u> Exhibit Exhibit 35 Chronological Sequence from Ringo Discovery)(Simon, John) (Entered: 12/03/2013)</p>
12/03/2013	<u>184</u>	<p>MOTION to stay <i>execution</i> filed by Jennifer Herndon on behalf of Allen L. Nicklasson. Suggestions in opposition/response due by 12/20/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Execution Protocol, # <u>2</u> Exhibit DOC Press Release, # <u>3</u> Exhibit Dr. Sasich Affidavit, # <u>4</u> Exhibit Dr. Heath Declaration, # <u>5</u> Exhibit Dershwitz Report, # <u>6</u> Exhibit Purported Prescriptions, # <u>7</u> Exhibit Chemical Analysis Documents, # <u>8</u> Exhibit Dr. Sasich Supplemental Declaration, # <u>9</u> Exhibit Hill Order, # <u>10</u> Exhibit Dormire Affidavit, # <u>11</u> Exhibit 8CTA Email on Reversal of Stay, # <u>12</u> Exhibit 8CTA Email on Denial of Rehearing, # <u>13</u> Exhibit Email from Bickell, # <u>14</u> Exhibit Email from Laura Bax, # <u>15</u> Exhibit Email from Joe Luby to Defense Counsel, # <u>16</u> Exhibit Dr. Sasich 2nd Supplemental Declaration, # <u>17</u> Exhibit Chronological Sequence of Execution, # <u>18</u> Exhibit Sunshine Law Disclosure to Bray)(Herndon, Jennifer) (Entered: 12/03/2013)</p>
12/05/2013	<u>187</u>	<p>SUGGESTIONS in opposition re <u>184</u> MOTION to stay <i>execution</i> <i>Suggestions in Opposition</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 12/23/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Grievance Affidavit, # <u>2</u> Exhibit Nicklasson Grievance, # <u>3</u> Exhibit Orders granting leave to amend complaint and setting conference, # <u>4</u> Exhibit 8th Circuit Order Vacating Stay, # <u>5</u> Exhibit US Supreme Court Order Denying Stay, # <u>6</u> Exhibit Missouri Supreme Court Pleadings and Order, # <u>7</u> Exhibit Document 178-2 Lab Work from Franklin Execution, # <u>8</u> Exhibit Document 31 Order on Motion to Dismiss, # <u>9</u> Exhibit Letter from Texas Pharmacist Document 16-1, # <u>10</u> Exhibit Affidavit invoking state secrets privilege, # <u>11</u> Exhibit Certificate of Analysis for Nicklasson Execution, # <u>12</u> Exhibit Microbiology Report Nicklasson Execution)(Related document(s) <u>184</u>) (Spillane, Michael) (Entered: 12/05/2013)</p>
12/06/2013	<u>188</u>	<p>REPLY SUGGESTIONS to motion re <u>184</u> MOTION to stay <i>execution</i> filed by Jennifer Herndon on behalf of Plaintiff Allen L. Nicklasson. (Attachments: # <u>1</u> Exhibit Defendants' Eighth Circuit Filing, # <u>2</u> Exhibit SCOMO Filing by State, # <u>3</u> Exhibit Discovery Documents 10-25-2013, # <u>4</u> Exhibit Letter to Defense Counsel, # <u>5</u> Exhibit Sasich Third Supplemental Declaration, # <u>6</u> Notice of Exhibit Attachment Notice of Sealed Exhibit Attachment re Reply, # <u>7</u> Notice of Exhibit Attachment Notice of Sealed Exhibit Attachment re</p>

		Reply)(Related document(s) <u>184</u>) (Herndon, Jennifer) (Additional attachment(s) added on 12/11/2013: # <u>8</u> Exhibit 6 (Sealed), # <u>9</u> Exhibit 7 (Sealed)) (Martin, Jan). (Entered: 12/06/2013)
12/06/2013	<u>189</u>	MOTION for protective order filed by Andrew Tyler Bailey on behalf of All Defendants. Suggestions in opposition/response due by 12/23/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Respondents Exhibits 1–7)(Bailey, Andrew) (Entered: 12/06/2013)
12/09/2013	190	ORDER RESETTING TELECONFERENCE. The Telephone Conference previously set for today at 2:00 PM, is RESET for 12/12/2013, at 09:00 AM, before District Judge Nanette K. Laughrey. Dial in number is 877–336–1274; Access Code: 2707681. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/09/2013)
12/10/2013	<u>191</u>	SUGGESTIONS in opposition re <u>184</u> MOTION to stay <i>execution Supplemental Suggestions with attached potency and sterility results on the chemical to be used in the Nicklasson execution</i> filed by Michael Joseph Spillane on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 12/27/2013 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Potency and sterility results)(Related document(s) <u>184</u>) (Spillane, Michael) (Entered: 12/10/2013)
12/10/2013	<u>192</u>	REPLY SUGGESTIONS to motion re <u>184</u> MOTION to stay <i>execution Reply to Defendants' Supplemental Opposition</i> filed by Joseph Luby on behalf of Plaintiff Allen L. Nicklasson. (Related document(s) <u>184</u>) (Luby, Joseph) (Entered: 12/10/2013)
12/10/2013	<u>193</u>	MOTION for sanctions filed by Kathryn Parish on behalf of All Plaintiffs. Suggestions in opposition/response due by 12/27/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K)(Attorney Kathryn Parish added) (Entered: 12/10/2013)
12/10/2013	194	ORDER entered by Judge Nanette Laughrey. The Court declines to grant the stay because the 8th Circuit has already granted the stay. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/10/2013)
12/11/2013	<u>195</u>	MOTION to stay <i>Emergency Motion for Conditional Stay of Execution</i> filed by Jennifer Herndon on behalf of Allen L. Nicklasson. Suggestions in opposition/response due by 12/30/2013 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Email to Court, # <u>2</u> Exhibit Email to Opposing Counsel, # <u>3</u> Exhibit Email From Hawke, # <u>4</u> Exhibit Media Story from Missourinet)(Herndon, Jennifer) (Entered: 12/11/2013)
12/11/2013	<u>196</u>	ORDER entered by Judge Nanette Laughrey. Because the Defendants have indicated their intent to execute Mr. Nicklasson even if a motion for stay is pending in this Court, Mr. Nicklasson has requested a conditional order ruling his motion for stay. The Motion for Stay [Doc. 184] is DENIED, pursuant to the attached order. (Matthes, Renea) (Entered: 12/11/2013)
12/11/2013	197	ORDER entered by Judge Nanette Laughrey. Pursuant to this Court's Order, [Doc. 196], Mr. Nicklasson's Emergency Motion for Conditional Stay of Execution [Doc. 195] is DENIED. This is a TEXT ONLY ENTRY. No

			document is attached .(Matthes, Renea) (Entered: 12/11/2013)
12/11/2013	198		NOTICE OF APPEAL as to 197 Order on Motion to Stay, 196 Order on Motion to Stay, by Allen L. Nicklasson. (Herndon, Jennifer) (Entered: 12/11/2013)
12/11/2013	199		TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document 198 Notice of Appeal. (Bax, Laura) (Entered: 12/11/2013)
12/11/2013	200		USCA Case Number from USCA is 13-3664 for 198 Notice of Appeal filed by Allen L. Nicklasson. A briefing schedule was not issued at this time. (Bax, Laura) (Entered: 12/11/2013)
12/12/2013	201		ORDER of US COURT OF APPEALS as to 198 Notice of Appeal filed by Allen L. Nicklasson (Bax, Laura) (Entered: 12/12/2013)
12/12/2013	202		SUGGESTIONS in opposition re 193 MOTION for sanctions filed by Andrew Tyler Bailey on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 12/30/2013 unless otherwise directed by the court (Related document(s) 193) (Bailey, Andrew) (Entered: 12/12/2013)
12/12/2013	203		<p>MINUTE ENTRY. Teleconference held before Judge Nanette Laughrey on December 12, 2013. Time: 9:00 a.m. – 9:27 a.m. Comments: Teleconference held to resolve whether Defendants are required to reveal the identity of pharmacist who compounds the pentobarbital used in executions, the laboratory that tests the compounded drug, and the doctor who provides a prescription for the compounded drug. Defendants assert the identities of these individuals are protected by the state secrets privilege and Missouri's death penalty statute, section 546.720 RSMo. Defendants are concerned with the safety of those involved, should their identities be revealed to the public. Plaintiffs argue the state secrets privilege is customarily used with issues of national security and the absence of protection of these individuals' identities in the death penalty statute is further support that their identities are not a state secret. The Court found section 546.720 RSMo does not prohibit disclosure of the identities of the compounding pharmacist, investigative laboratory, and prescribing physician. At the time the statute was passed there was no evidence the issues in this law suit existed; the state was acquiring drugs from foreign manufacturers. Additionally, the state secret privilege does not apply. The Court ordered Defendants to reveal the identities of the compounding pharmacist, the investigative laboratory, and the prescribing physician to Mr. Luby and Ms. Pilot only. If at some point Mr. Luby and Ms. Pilot need help from other attorneys, they must seek permission from the Court to disclose the identities of the pharmacist, laboratory, and physician to additional attorneys. Mr. Luby and Ms. Pilot must refrain from directly identifying to any other person the pharmacist, physician, or laboratory as individuals who are assisting the state in the execution of prisoners. The Court further ordered Defendants to work with Plaintiffs to maintain confidentiality when the investigation involves state organizations. The Court further ordered that on or before 12/19/2013, Defendants must provide to the Court a list identifying all people in the state government who are aware of the identity of the pharmacist, physician, and laboratory. This list shall be provided to the Court by email or in paper and it shall not be made public or filed on ECF or otherwise.</p>

		<p>Appearances: Plaintiff by: Elizabeth Carlyle, Joseph Luby, John Simon, Elizabeth Carlyle, Cheryle Pilot, and Kathryn Parish. Defendants by: Susan Boresi, Michael Spillane, Stephen Hawke, David Hansen and Andrew Bailey. Court Reporter. Gayle Wambolt. CRD: Renea Kanies (TEXT ENTRY ONLY – NO DOCUMENT ATTACHED). To order a transcript of this hearing please contact Gayle Wambolt, 816–512–5641. (Matthes, Renea) (Entered: 12/12/2013)</p>
12/12/2013	204	<p>ORDER entered by Judge Nanette Laughrey. During a teleconference on 12/12/2013, the Court ordered Defendants to disclose the identities of the compounding pharmacist, prescribing physician, and investigative laboratory. Defendants are ordered to produce to Mr. Luby and Ms. Pilot the identities of these individuals no later than 12/16/2013. The Court further orders that any time Plaintiffs seek information relating to the pharmacist, laboratory, or physician from a third party, Plaintiffs must secure a written agreement with that third party requiring the identity of the pharmacist, laboratory, or physician to remain confidential. Plaintiffs and Defendants shall confer on the wording of the confidentiality agreement, and if a dispute arises as to the contents of the agreement, the Parties should contact the Court by no later than 12/16/2013. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 12/12/2013)</p>
12/12/2013	205	<p>ORDER entered by Judge Nanette Laughrey. Defendants' Motion for Protective Order [Doc. 189] is DENIED for the same reasons as discussed during the Court's teleconference with the Parties on 12/12/2013. This is a TEXT ONLY ENTRY. No document is attached.(Matthes, Renea) (Entered: 12/12/2013)</p>
12/13/2013	<u>206</u>	<p>MOTION to stay re 204 Order,, 203 Telephone Conference,,,,,,,,, 205 Order on Motion for Protective Order, filed by Stephen David Hawke on behalf of All Defendants. Suggestions in opposition/response due by 12/30/2013 unless otherwise directed by the court. (Related document(s) 204 , 203 , 205) (Hawke, Stephen) (Entered: 12/13/2013)</p>
12/13/2013	<u>207</u>	<p>NOTICE of FILING of application for writ by George A. Lombardi (Attachments: # <u>1</u> Exhibit Transcript of 12–12–2013 conference)(Spillane, Michael) Modified on 12/16/2013 to reflect that this is a notice to the court that a mandamus has been filed with the USCA. (Bax, Laura). (Entered: 12/13/2013)</p>
12/15/2013	<u>208</u>	<p>SUGGESTIONS in opposition re <u>206</u> MOTION to stay re 204 Order, 203 Telephone Conference, 205 Order on Motion for Protective Order, filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 1/2/2014 unless otherwise directed by the court (Related document(s) <u>206</u>) (Luby, Joseph) (Entered: 12/15/2013)</p>
12/16/2013	209	<p>ORDER SETTING TELECONFERENCE. A Telephone Conference is set for today, 12/16/2013, at 04:00 PM, before District Judge Nanette K. Laughrey, regarding Motion to Stay (Doc. 206). Dial in number is 877–336–1274;</p>

		Access Code #: 2707681. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/16/2013)
12/16/2013	<u>210</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>Fourth Interrogatories to Dormire, First Interrogatories to Lombardi, Fourth Production Request</i> filed by Elizabeth Unger Carlyle on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Carlyle, Elizabeth) (Entered: 12/16/2013)
12/16/2013	211	Appeal Remark: USCA Case number 13-3699 assigned for Petitioner's Petition for Writ of Prohibition or Mandamus.(Lock, Tania) (Entered: 12/16/2013)
12/16/2013	<u>212</u>	SUGGESTIONS in support re <u>206</u> MOTION to stay re 204 Order,, 203 Telephone Conference,,,,,,,,, 205 Order on Motion for Protective Order, filed by Stephen David Hawke on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell. (Related document(s) <u>206</u>) (Hawke, Stephen) (Entered: 12/16/2013)
12/16/2013	<u>213</u>	ORDER entered by Judge Nanette Laughrey. Defendants' Motion to Stay <u>206</u> is DENIED.(Smith, Fran) (Entered: 12/16/2013)
12/16/2013	<u>214</u>	MOTION to stay re <u>213</u> Order on Motion to Stay (<i>service copy of appellate motion</i>) filed by Stephen David Hawke on behalf of All Defendants. Suggestions in opposition/response due by 1/2/2014 unless otherwise directed by the court. (Related document(s) <u>213</u>) (Hawke, Stephen) (Entered: 12/16/2013)
12/16/2013	215	ORDER entered by Judge Nanette Laughrey. Defendants' Motion to Stay <u>214</u> is DENIED for the same reasons provided in the Court's Order [Doc. 213] denying Defendants' First Motion to Stay. This is a TEXT ONLY ENTRY. No document is attached. (Cross, Ashley) (Entered: 12/16/2013)
12/16/2013	216	MINUTE ENTRY. Teleconference held before Judge Nanette Laughrey on December 16, 2013. Time: 4:04 p.m. to 4:13 p.m. Comments: Teleconference held regarding Defendant's Motion to Stay [Doc. 206]. Argument presented. The Court took the matter under advisement. Appearances: Plaintiff by: Elizabeth Carlyle, Joseph Luby, John Simon, Elizabeth Carlyle, Cheryle Pilot, and Kathryn Parish. Defendants by: Susan Boresi, Michael Spillane, Stephen Hawke, David Hansen and Andrew Bailey. Court Reporter. Katie Wirt. CRD: Renea Kanies (TEXT ENTRY ONLY - NO DOCUMENT ATTACHED). To order a transcript of this hearing please contact Katie Wirt, 816-512-5608. (Matthes, Renea) (Entered: 12/17/2013)
12/17/2013	<u>217</u>	MOTION for sanctions , <i>including a finding of contempt for failure to comply with this Court's discovery orders</i> filed by Cheryl Ann Pilate on behalf of All Plaintiffs. Suggestions in opposition/response due by 1/3/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A - draft confidentiality agreement)(Attorney Cheryl Ann Pilate added to party David M. Barnett(pty:pla), Attorney Cheryl Ann Pilate added to party Mark A. Christeson(pty:pla), Attorney Cheryl Ann Pilate added to party Cecil

		Clayton(pty:pla), Attorney Cheryl Ann Pilate added to party Reginald Clemons(pty:pla), Attorney Cheryl Ann Pilate added to party Andre Cole(pty:pla), Attorney Cheryl Ann Pilate added to party Jeffrey R. Ferguson(pty:pla), Attorney Cheryl Ann Pilate added to party Joseph Paul Franklin(pty:pla), Attorney Cheryl Ann Pilate added to party Paul T. Goodwin(pty:pla), Attorney Cheryl Ann Pilate added to party John C. Middleton(pty:pla), Attorney Cheryl Ann Pilate added to party Allen L. Nicklasson(pty:pla), Attorney Cheryl Ann Pilate added to party Roderick Nunley(pty:pla), Attorney Cheryl Ann Pilate added to party Earl Ringo(pty:pla), Attorney Cheryl Ann Pilate added to party William Rousan(pty:pla), Attorney Cheryl Ann Pilate added to party Walter T. Storey(pty:pla), Attorney Cheryl Ann Pilate added to party Leon Taylor(pty:pla), Attorney Cheryl Ann Pilate added to party Michael A. Taylor(pty:pla), Attorney Cheryl Ann Pilate added to party John E. Winfield(pty:pla), Attorney Cheryl Ann Pilate added to party Michael Worthington(pty:pla), Attorney Cheryl Ann Pilate added to party David Zink(pty:pla))(Pilate, Cheryl) (Entered: 12/17/2013)
12/17/2013	<u>218</u>	STATUS REPORT by David R. Dormire, George A. Lombardi, Terry Russell. (Attachments: # <u>1</u> Supplement Letter to Judge Laughrey)(Boresi, Susan) (Entered: 12/17/2013)
12/17/2013	<u>225</u>	ORDER of US COURT OF APPEALS (James, Carrie) (Entered: 12/18/2013)
12/18/2013	<u>219</u>	NOTICE of application for writ by George A. Lombardi (Spillane, Michael) (Entered: 12/18/2013)
12/18/2013	220	ORDER SETTING TELECONFERENCE entered by Judge Nanette Laughrey. A Telephone Conference is set for Wednesday, December 18, 2013 at 1:00 pm regarding continued discovery disputes. The Court orders either George A. Lombardi or David R. Dormire to be on the phone conference. All parties shall call conference number: 877-336-1274; Access Code #: 2707681 to participate in the call. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 12/18/2013)
12/18/2013	221	ORDER entered by Judge Nanette Laughrey. It is hereby ordered that Defendants suggestions in opposition to <u>217</u> MOTION for sanctions , <i>including a finding of contempt for failure to comply with this Court's discovery orders</i> be filed on or before December 20, 2013. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 12/18/2013)
12/18/2013	<u>222</u>	MOTION to vacate filed by Susan D. Boresi on behalf of George A. Lombardi. Suggestions in opposition/response due by 1/6/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Boresi, Susan) (Entered: 12/18/2013)
12/18/2013	223	ORDER entered by Judge Nanette Laughrey. Defendants' Motion to Vacate <u>222</u> is GRANTED in part and DENIED in part. The order setting a teleconference for December 18, 2013, at 1:00 p.m. [Doc. 220] is vacated. Defendants' Motion to Vacate the Court's Order ordering Defendants to file Suggestions in Opposition to Plaintiffs' Motion for Sanctions [Doc. 221] is DENIED. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/18/2013)

12/18/2013	<u>224</u>		ELECTRONIC TRANSCRIPT of Teleconference held December 12, 2013 before Senior Judge Nanette K. Laughrey. Court Reporter: Gayle Wambolt, 816-512-5641, gayle_wambolt@mow.uscourts.gov. Number of pages: 17. NOTICE RE: REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Redaction, of the parties' intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.mow.uscourts.gov. Please read this policy carefully. NOTICE: Attorneys must contact the court reporter for copies during this 90 day period. Notice of Intent to File Redaction of Transcripts due by 12/26/2013. Release of Transcript Restriction set for 3/20/2014. (Wambolt, Gayle) (Entered: 12/18/2013)
12/19/2013	<u>226</u>		SCHEDULING ORDER entered by Judge Nanette Laughrey. The attached scheduling order is stayed until the current discovery dispute is resolved. (Attachments: # <u>1</u> Memo on PTC) (Matthes, Renea) (Entered: 12/19/2013)
12/19/2013	<u>227</u>		ORDER of US COURT OF APPEALS (James, Carrie) (Entered: 12/19/2013)
12/19/2013	<u>228</u>		REPLY SUGGESTIONS to motion re <u>193</u> MOTION for sanctions filed by Kathryn Parish on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Attachments: # <u>1</u> Exhibit C – News Article, # <u>2</u> Exhibit D – Dormire Responses to Interrogatories, # <u>3</u> Exhibit E – M3 Interrogatory Responses, # <u>4</u> Exhibit F – Defendants Responses to Production Requests)(Related document(s) <u>193</u>) (Parish, Kathryn) (Entered: 12/19/2013)
12/19/2013	<u>229</u>		NOTICE (SEALED) by David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink re <u>228</u> Reply Suggestions to Motion, (Attachments: # <u>1</u> Exhibit A – Article, # <u>2</u> Exhibit B – Deposition Pages)(Parish, Kathryn) Two copies of Seal Exhibits received in Clerk's Office on 12/23/2013. A Copy was forwarded to Chambers on 12/26/2013 (Martin, Jan). (Entered: 12/19/2013)
12/20/2013	<u>230</u>		MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Motion to dismiss amended complaint for failure to state a claim on which relief can be granted</i> filed by Michael Joseph Spillane on behalf of George A. Lombardi. Suggestions in opposition/response due by 1/6/2014 unless otherwise directed by the court. (Spillane, Michael) (Entered: 12/20/2013)
12/20/2013	<u>231</u>		SUGGESTIONS in opposition re <u>217</u> MOTION for sanctions , <i>including a finding of contempt for failure to comply with this Court's discovery orders</i> filed by Andrew Tyler Bailey on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell. Reply suggestions due by 1/6/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Respondents' Exhibit A, # <u>2</u> Exhibit Respondents' Exhibit B)(Related document(s) <u>217</u>) (Bailey, Andrew) (Entered: 12/20/2013)

12/23/2013	<u>232</u>		REPLY SUGGESTIONS to motion re <u>217</u> MOTION for sanctions , <i>including a finding of contempt for failure to comply with this Court's discovery orders</i> filed by Cheryl Ann Pilate on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Attachments: # <u>1</u> Exhibit A – Eighth Circuit Order in Nicklasson v. Lombardi, dissent from denial of stay, by Judge Bye, joined by Judge Kelly)(Related document(s) <u>217</u>) (Pilate, Cheryl) (Entered: 12/23/2013)
12/23/2013	<u>233</u>		AMENDED ORDER of US COURT OF APPEALS (Lock, Tania) (Entered: 12/23/2013)
12/26/2013	234		ORDER entered by Judge Nanette Laughrey. Defendants' Motion for Summary judgment <u>116</u> is DENIED because Defendants have represented to the the Court that they no longer intend to use Propofol in their executions. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/26/2013)
12/26/2013	235		ORDER entered by Judge Nanette Laughrey. Defendants' Motion to Supplement Discovery <u>136</u> is DENIED as untimely. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/26/2013)
12/26/2013	236		ORDER entered by Judge Nanette Laughrey. Flynt's Motion for Reconsideration <u>177</u> is DENIED. A generalized interest in a subject of litigation does not justify intervention. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/26/2013)
12/27/2013	237		ORDER entered by Judge Nanette Laughrey. Pursuant to the Eighth Circuit's judgment in case no. 13–3699 denying in part Defendants' Petition for Writ of Mandamus, Defendants are ordered to disclose the identities of the compounding pharmacist and investigative laboratory to Mr. Luby and Ms. Pilate by 5:00 p.m. on December 27, 2013. The scheduling order entered by the Court on 12/19/2013 [Doc. 226] is no longer stayed. This is a TEXT ONLY ENTRY. No document is attached. (Cross, Ashley) (Entered: 12/27/2013)
12/27/2013	<u>238</u>		ORDER of US COURT OF APPEALS (James, Carrie) (Entered: 12/27/2013)
12/27/2013	<u>239</u>		USCA Judgment and/or Opinion as to <u>198</u> Notice of Appeal filed by Allen L. Nicklasson This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (James, Carrie) (Entered: 12/27/2013)
12/27/2013	<u>240</u>		MANDATE of US COURT OF APPEALS as to <u>198</u> Notice of Appeal with mandate issued on 12/27/13. (James, Carrie) (Entered: 12/27/2013)
12/27/2013	<u>241</u>		STATUS REPORT by George A. Lombardi. (Boresi, Susan) (Entered: 12/27/2013)
12/28/2013	<u>242</u>		ORDER entered by Judge Nanette Laughrey reflecting the release of the names of the pharmacists and the testing laboratory used by the Defendants to obtain the drugs at issue in this case. (Weber, Alex) (Entered: 12/28/2013)

12/28/2013	243		ORDER entered by Judge Nanette Laughrey. Since entering its Order, [Doc. 242], the Court learned that the Eighth Circuit stayed its judgment filed on December 27, 2013. In light of this stay, Ms. Pilate and Mr. Luby have been instructed to take no action concerning the information provided them until a phone conference can be arranged with the parties at the earliest possible time. This is a TEXT ONLY ENTRY. No document is attached. (Weber, Alex) (Entered: 12/28/2013)
12/29/2013	244		ORDER entered by Judge Nanette Laughrey. The Order <u>242</u> entered on December 28, 2013, is VACATED. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 12/29/2013)
12/30/2013	245		ORDER entered by Judge Nanette Laughrey. Telephone Conference set for 12/30/2013 at 11:00 AM before District Judge Nanette K. Laughrey. Dial in number: 877-336-1274; Access Code #: 2707681. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) Modified on 12/30/2013 to remove Courtroom information. Conference is by telephone. (Matthes, Renea). (Entered: 12/30/2013)
12/30/2013	246		ORDER RESETTNG TELECONFERENCE. The Telephone Conference is reset for 11:45 am on 12/30/2013. Dial in number: 877-336-1274; Access Code #: 2707681. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 12/30/2013)
12/30/2013	<u>247</u>		ORDER of US COURT OF APPEALS (Bax, Laura) (Entered: 12/30/2013)
12/30/2013	<u>248</u>		ORDER of US COURT OF APPEALS (Bax, Laura) (Entered: 12/30/2013)
12/30/2013	249		ORDER RESETTNG TELEPHONE CONFERENCE entered by Judge Nanette Laughrey. The Telephone Conference is reset for 10:00 AM (previously 11:45 am) on 12/30/2013. Dial in number: 877-336-1274; Access Code #: 2707681. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 12/30/2013)
12/30/2013	250		ORDER SETTING ORAL ARGUMENT. Oral Argument on the two pending Motions for Sanctions (Docs. 193 and 217) is set for 1/7/2014, at 01:00 PM, before District Judge Nanette K. Laughrey. Plaintiffs will be permitted to appear by video feed from Courtroom 8E, Kansas City. Defendants shall appear in person at Courtroom 4A, Jefferson City. Both counsel and the defendants are ordered to appear. This is a TEXT ONLY ENTRY. No document is attached. (Smith, Fran) (Entered: 12/30/2013)
12/30/2013	251		MINUTE ENTRY. Teleconference held before Judge Nanette Laughrey on December 30, 2013, regarding scheduling and discovery issues. Time: 10:20 a.m. – 11:08 a.m. Appearances: Cheryl Pilate, John Simon, Elizabeth Carlyle, Joseph Luby, and Kathryn Parish. Defendants by: Susan Boresi, Andrew Bailey, Mike Spillane, Stephen Hawke, Mr. Lombardi, Mr. Dormire, and Judge Joseph Dandurand. The Court ordered expedited briefing on the defendant's Motion to Dismiss. Plaintiffs' Suggestions in Opposition to Defendants' is due on or before December 31, 2013. Defendants' Reply is due on or before January 3, 2014. The Court inquired as to whether the Parties would like to continue with discovery despite the pending litigation in the Eighth Circuit or if the Parties would like the Court to stay the scheduling order. Mr. Luby stated he did not believe Plaintiffs could adequately develop the record in time for a January 22 trial date, but wished to proceed with other

		<p>discovery while waiting for the Eighth Circuit's decision on disclosure of the pharmacist and testing laboratory. Defendants deferred to the Court as to whether the scheduling order should be stayed and as to whether the trial date should be vacated. The Court further ordered Ms. Pilate and Mr. Luby to not disclose any of the information contained in the email from the Court to them on 12/27/2013. If any of Plaintiffs' other counsel or staff members have independently learned of the information contained within that email, they are ordered not to disclose any of that information and to conduct no investigation as to the contents of that email. The Court further ordered Mr. Luby and Ms. Pilate to completely delete the email sent by the Court from their system and to delete any information obtained from that email from their files. Judge Dandurand requested the Court recuse itself from this case. The Court took the matter under advisement. Ms. Pilate requested the email the Court sent to Ms. Pilate and Mr. Luby be preserved in some way by the Court. All counsel for Plaintiffs, except for Ms. Pilate and Mr. Luby, left the phone conference at 10:53 a.m. The Court reiterated that Ms. Pilate, Mr. Luby, and any member of Plaintiffs' counsel and staff are ordered not to disclose the information provided in the email, are not to conduct investigations regarding the contents of the email, and are ordered to delete any trace of the contents of the emails and of the information contained within it. Plaintiffs are ordered to return all discovery provided to them by Defendants, and Defendants and Plaintiffs will work together to reissue discovery in an appropriate way. The Court further ordered that depositions scheduled for 12/30/2013 be cancelled until discovery has been returned by Plaintiffs and reissued by Defendants. To order a transcript of this hearing please contact Tania Lock, 573-556-7552 ***The portion of this hearing from 10:53-11:08, when all parties were not present, is sealed. Please see additional staff note on 12/30/2013*** CRD: Renea Matthes. (Matthes, Renea) Modified on 1/2/2014 (Lock, Tania). (Entered: 12/30/2013)</p>
12/30/2013	252	<p>ORDER entered by Judge Nanette Laughrey. The Orders setting oral argument for January 7, 2014 [Doc. 250] and trial for January 22, 2014 [Doc. 226] are vacated. (Text entry only – no document attached.) (Matthes, Renea) (Entered: 12/30/2013)</p>
12/30/2013	253	<p>ORDER entered by Judge Nanette Laughrey. At the request of the defendants, the Court recuses itself from all further proceedings in this matter. The Clerk of Court shall reassign the case. This is a TEXT ONLY ENTRY. No document is attached. (Matthes, Renea) (Entered: 12/30/2013)</p>
12/30/2013	<u>254</u>	<p>ADMINISTRATIVE ORDER REASSIGNING CASE. Case is reassigned to District Judge Beth Phillips for all further proceedings. District Judge Nanette K. Laughrey no longer assigned to this case. Signed on 12/30/13 by Clerk of Court. (Bax, Laura) (Entered: 12/30/2013)</p>
12/31/2013	<u>255</u>	<p>Emergency MOTION for order Order to preserve evidence <i>of waiver of privilege</i> filed by Elizabeth Unger Carlyle on behalf of All Plaintiffs. Suggestions in opposition/response due by 1/17/2014 unless otherwise directed by the court. (Carlyle, Elizabeth) (Entered: 12/31/2013)</p>
12/31/2013	<u>256</u>	<p>MOTION for leave to file <i>Suggestions in Opposition of Greater than 15 Pages</i> filed by John William Simon on behalf of All Plaintiffs. Suggestions in opposition/response due by 1/17/2014 unless otherwise directed by the court.</p>

		(Attachments: # <u>1</u> Exhibit Suggestions in Opposition to Latest Motion to Dismiss, # <u>2</u> Exhibit Exhibit 1 to Suggestions in Opposition)(Simon, John) (Entered: 12/31/2013)
01/02/2014	<u>257</u>	ORDER granting <u>256</u> : Plaintiffs' Motion for Leave to file Suggestions in Opposition (to Motion to Dismiss, Doc. 230) of Greater than 15 Pages is GRANTED. Plaintiffs are responsible for electronically filing the overlength brief as presented in Document 256, exhibits 1 (the Suggestions in Opposition) and 2 (exhibit). Signed on 1/2/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 01/02/2014)
01/02/2014	<u>258</u>	SUGGESTIONS in opposition re <u>230</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Motion to dismiss amended complaint for failure to state a claim on which relief can be granted</i> filed by John William Simon on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 1/21/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Reply Suggestions in Support of Second Extraordinary Writ Against This Court's Orders)(Related document(s) <u>230</u>) (Simon, John) (Entered: 01/02/2014)
01/02/2014	<u>259</u>	NOTICE OF HEARING – This is the official notice for this hearing. Telephone Conference set for January 7, 2014, at 1:00 PM, before District Judge Beth Phillips. Parties are to call in by dialing (877) 336–1839 and entering access code 4259420.(Cordell, Annette) (Entered: 01/02/2014)
01/03/2014	<u>260</u>	SUGGESTIONS in support re <u>230</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Motion to dismiss amended complaint for failure to state a claim on which relief can be granted</i> Reply Suggestions in Support of <i>Motion to Dismiss Amended Complaint</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. (Attachments: # <u>1</u> Exhibit Court of Appeals order)(Related document(s) <u>230</u>) (Spillane, Michael) (Entered: 01/03/2014)
01/03/2014	<u>261</u>	ELECTRONIC TRANSCRIPT of Hearing on Discovery Issues held December 30, 2013 before Judge Nanette K. Laughrey. Court Reporter: Lissa Whittaker, 816–914–3613, rapidtranscript@gmail.com. Number of pages: 19. NOTICE RE: REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Redaction, of the parties' intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.mow.uscourts.gov. Please read this policy carefully. NOTICE: Attorneys must contact the court reporter for copies during this 90 day period. Notice of Intent to File Redaction of Transcripts due by 1/10/2014. Release of Transcript Restriction set for 4/3/2014. (Whittaker, Lissa) (Entered: 01/03/2014)
01/07/2014	<u>262</u>	STATUS REPORT <i>Pre–Conference Memorandum</i> by David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Paul T. Goodwin, John C. Middleton,

		Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Carlyle, Elizabeth) (Entered: 01/07/2014)
01/07/2014	<u>263</u>	Minute Entry. Proceedings held before District Judge Beth Phillips: TELEPHONE CONFERENCE held on 1/7/2014. To order a transcript of this hearing please contact Katie Wirt, 816-512-5608. Order to follow in separate entry. (Cordell, Annette) (Entered: 01/07/2014)
01/07/2014	<u>264</u>	ORDER. The Court held a telephone conference on 1/7/2014 at 1 p.m. to discuss the status of this case. During the telephone conference, the Court made the following orders: The parties are hereby ORDERED to follow Local Rule 37.1 for any future discovery disputes. ORDERED that Defendants shall file any opposition to Plaintiffs' Emergency Motion (Doc. 255) by 1/10/14, and Plaintiffs shall file any reply by 1/14/2014. The parties are hereby ORDERED to submit a proposed scheduling order to the Court by 1/13/2014. Signed on 1/7/14 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 01/07/2014)
01/07/2014		NOTICE OF HEARING CANCELLATION – The Bench Trial scheduled for January 22, 2014 has been cancelled. Parties will be filing a proposed scheduling order. (Cordell, Annette) (Entered: 01/07/2014)
01/09/2014	<u>265</u>	NOTICE of appearance by David James Hansen on behalf of All Defendants (Attorney David James Hansen added to party John Does 2-40(pty:dft), Attorney David James Hansen added to party David R. Dormire(pty:dft), Attorney David James Hansen added to party George A. Lombardi(pty:dft), Attorney David James Hansen added to party Terry Russell(pty:dft))(Hansen, David) (Entered: 01/09/2014)
01/09/2014	<u>266</u>	PROPOSED SCHEDULING ORDER <i>Jointly Proposed Scheduling Order</i> by John E. Winfield. (Luby, Joseph) (Entered: 01/09/2014)
01/09/2014	<u>267</u>	MOTION for leave to file <i>Surreply Suggestions Against Latest Motion to Dismiss</i> filed by John William Simon on behalf of All Plaintiffs. Suggestions in opposition/response due by 1/27/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Surreply, # <u>2</u> Exhibit Surreply Exhibit 1, SLPR Discovery of Out-of-State Source)(Simon, John) (Entered: 01/09/2014)
01/09/2014	<u>268</u>	CERTIFICATE OF SERVICE by All Defendants <i>Defendants' Supplemental Response to Plaintiffs' Request for Production of Documents</i> filed by Susan D. Boresi on behalf of Defendants John Does 2-40, David R. Dormire, George A. Lombardi, Terry Russell.(Boresi, Susan) (Entered: 01/09/2014)
01/09/2014	<u>269</u>	SUGGESTIONS in opposition re <u>255</u> Emergency MOTION for order Order to preserve evidence <i>of waiver of privilege</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 1/27/2014 unless otherwise directed by the court (Related document(s) <u>255</u>) (Spillane, Michael) (Entered: 01/09/2014)
01/10/2014	<u>270</u>	ELECTRONIC TRANSCRIPT of Teleconference held 1/7/2014 before Judge Beth Phillips. Court Reporter: Katie Wirt, 816-512-5608, katie_wirt@mow.uscourts.gov. Number of pages: 21. NOTICE RE: REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each

		<p>party shall inform the Court, by filing a Notice of Redaction, of the parties' intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.mow.uscourts.gov. Please read this policy carefully. NOTICE: Attorneys must contact the court reporter for copies during this 90 day period. Notice of Intent to File Redaction of Transcripts due by 1/17/2014. Release of Transcript Restriction set for 4/10/2014.(Wirt, Katie) (Entered: 01/10/2014)</p>
01/13/2014	<u>271</u>	<p>SCHEDULING ORDER: Discovery due by 4/25/2014. Dispositive Motions due by 5/15/2014. Pretrial Conference set for 6/13/2014 10:00 AM, via teleconference before District Judge Beth Phillips. Bench Trial set for 6/16/2014, 8:30 AM in District Courtroom 4B, Jefferson City (VDJJC) before District Judge Beth Phillips. Signed on 1/13/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 01/13/2014)</p>
01/13/2014	<u>272</u>	<p>REPLY SUGGESTIONS to motion re <u>255</u> Emergency MOTION for order Order to preserve evidence <i>of waiver of privilege</i> filed by Elizabeth Unger Carlyle on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. (Related document(s) <u>255</u>) (Carlyle, Elizabeth) (Entered: 01/13/2014)</p>
01/13/2014	<u>273</u>	<p>CERTIFICATE OF SERVICE by All Plaintiffs <i>Notice of service of Plaintiffs' Fifth Request for Production and Fifth Interrogatories to Defendant Dormire</i> filed by Cheryl Ann Pilate on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Pilate, Cheryl) (Entered: 01/13/2014)</p>
01/14/2014	<u>274</u>	<p>CERTIFICATE OF SERVICE by All Defendants <i>of Defendant Dormire's Answers to Plaintiffs' Third and Fourth Set of Interrogatories to Defendant Dormire</i> filed by Susan D. Boresi on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Boresi, Susan) (Entered: 01/14/2014)</p>
01/14/2014	<u>275</u>	<p>CERTIFICATE OF SERVICE by All Defendants <i>of Defendant Lombardi's Answers to Plaintiffs' First Set of Interrogatories to Defendant George A. Lombardi</i> filed by Susan D. Boresi on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Boresi, Susan) (Entered: 01/14/2014)</p>
01/16/2014	<u>276</u>	<p>NOTICE of filing <i>notification of recent authority</i> by George A. Lombardi re <u>230</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Motion to dismiss amended complaint for failure to state a claim on which relief can be granted</i> (Attachments: # <u>1</u> Exhibit Ohio decision)(Spillane, Michael) (Entered: 01/16/2014)</p>

01/17/2014	280		NOTICE OF HEARING – This is the official notice for this hearing. Pursuant to Local Rule 37.1, a Telephone Conference is set for 1/21/2014 10:00 AM, before District Judge Beth Phillips. Parties shall email the following no later than noon on Monday, January 20, 2014, to annette_cordell@mow.uscourts.gov: 1) the proposed Motion to Stay from Plaintiffs, 2) a copy of the deposition, and 3) a one page summary from each party addressing the dispute(s). PARTIES SHALL NOT FILE ANY DOCUMENTS CONTAINING DISPUTED CONFIDENTIAL INFORMATION UNTIL AFTER THIS TELECONFERENCE. (Cordell, Annette) (Entered: 01/17/2014)
01/17/2014	<u>284</u>		ORDER of US COURT OF APPEALS (James, Carrie) (Entered: 01/21/2014)
01/18/2014	<u>281</u>		RESPONSE to motion <i>or filing by defendants of supplemental authority</i> filed by John William Simon on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 2/6/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Columbus Dispatch Coverage of McGuire Execution, # <u>2</u> Exhibit Fox Coverage of McGuire Execution, # <u>3</u> Exhibit New York Times Coverage of McGuire Execution, # <u>4</u> Exhibit The Guardian Coverage of McGuire Execution, # <u>5</u> Exhibit The Times Coverage of McGuire Execution, # <u>6</u> Exhibit Der Spiegel Coverage of McGuire Execution, # <u>7</u> Exhibit Voice of Russia Coverage of McGuire Execution)(Simon, John) (Entered: 01/18/2014)
01/19/2014	<u>282</u>		RESPONSE to motion <i>i.e. notice of authority by defendants (THIS RESPONSE BEING A SUPERSEDING AMENDMENT OF THE FILING ON JAN. 18, 2014,</i> filed by John William Simon on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 2/6/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Columbus Dispatch Coverage of McGuire Execution, # <u>2</u> Exhibit Fox Coverage of McGuire Execution, # <u>3</u> Exhibit New York Times Coverage of McGuire Execution, # <u>4</u> Exhibit The Guardian Coverage of McGuire Execution, # <u>5</u> Exhibit The Times Coverage of McGuire Execution, # <u>6</u> Exhibit Der Spiegel Coverage of McGuire Execution, # <u>7</u> Exhibit Voice of Russia Coverage of McGuire Execution)(Simon, John) (Entered: 01/19/2014)
01/21/2014	283		Minute Entry. Proceedings held before District Judge Beth Phillips: TELEPHONE CONFERENCE held on 1/21/2014. The Court held a teleconference on January 21, 2014 for a discovery dispute regarding confidential information in a deposition. Due to that confidential information, the transcript will be sealed. (Cordell, Annette) (Entered: 01/21/2014)
01/21/2014	<u>285</u>		MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a</i>

			<i>Substandard Compounded Drug</i> filed by Cheryl Ann Pilate on behalf of Herbert Smulls. Suggestions in opposition/response due by 2/7/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit D, # <u>4</u> Exhibit E, # <u>5</u> Exhibit F, # <u>6</u> Exhibit G, # <u>7</u> Exhibit H, # <u>8</u> Exhibit I, # <u>9</u> Exhibit J, # <u>10</u> Exhibit K, # <u>11</u> Exhibit L, # <u>12</u> Exhibit M, # <u>13</u> Exhibit N, # <u>14</u> Exhibit O, # <u>15</u> Exhibit P, # <u>16</u> Exhibit Q, # <u>17</u> Exhibit R)(Pilate, Cheryl) (Entered: 01/21/2014)
01/21/2014	<u>286</u>		NOTICE (SEALED) by Herbert Smulls re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug – Exhibit C</i> (Pilate, Cheryl) (Entered: 01/21/2014)
01/21/2014	<u>287</u>		NOTICE (SEALED) by Herbert Smulls re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug – Exhibit D 1</i> (Pilate, Cheryl) (Entered: 01/21/2014)
01/23/2014	<u>288</u>		CERTIFICATE OF SERVICE by All Defendants <i>Supplemental Response to Plaintiffs' Request for Production to All Defendants</i> filed by Susan D. Boresi on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Boresi, Susan) (Entered: 01/23/2014)
01/23/2014	<u>289</u>		CERTIFICATE OF SERVICE by All Defendants <i>of Defendants' Supplemental Response to Plaintiffs' Request for Prodcution to All Defendants</i> filed by David James Hansen on behalf of Defendants John Does 2–40, David R. Dormire, George A. Lombardi, Terry Russell.(Hansen, David) (Entered: 01/23/2014)
01/23/2014	<u>290</u>		SUGGESTIONS in opposition re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 2/10/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Mo. Sct. Stay motions and denials, # <u>2</u> Exhibit 8th Circuit order reversing Franklin stay, # <u>3</u> Exhibit District court order denying Nicklasson stay, # <u>4</u> Exhibit USP 36 Chapter 797, # <u>5</u> Exhibit Franklin Lab Results, # <u>6</u> Exhibit Nicklasson Lab Results, # <u>7</u> Exhibit Report of Franklin execution witness interviews, # <u>8</u> Exhibit Report of Nicklasson Witness interviews, # <u>9</u> Exhibit Summary judgment grant in Ringo, # <u>10</u> Exhibit S.D. Ohio stay denial, # <u>11</u> Exhibit Smulls lab work, # <u>12</u> Exhibit Notification of dismissal of Mo. pharmacy complaint, # <u>13</u> Exhibit Certificate of Service concerning Smulls lab work)(Related document(s) <u>285</u>) (Spillane, Michael) (Entered: 01/23/2014)
01/24/2014			NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 1/24/14 as Document No. 291. Exhibit attached to this motion has been deleted until a decision from the Court has been made as to whether the exhibit can be reattached to this motion. This is a text entry only – no document is attached. (McIlvain, Kelly) (Entered: 01/24/2014)
01/24/2014	292		NOTICE OF HEARING – This is the official notice for this hearing. Telephone Conference set for 1/24/2014, 2:15 PM, before District Judge Beth Phillips. Parties have been emailed the call–in number and access code. This

		teleconference is only for the parties involved in this litigation.(Cordell, Annette) (Entered: 01/24/2014)
01/24/2014	<u>293</u>	NOTICE of filing <i>Ex. C-1, Dormire Depo Transcript – Redacted</i> by Herbert Smulls re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug</i> (Pilate, Cheryl) (Entered: 01/24/2014)
01/24/2014		NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 1/24/2014 as Document No. 291, Motion. THIS MOTION WAS DELETED BY ORDER OF THE COURT UNTIL DECISION CAN BE MADE AS TO WHETHER THIS MOTION CAN BE REFILED. This is a text entry only – no document is attached. (McIlvain, Kelly) (Entered: 01/24/2014)
01/24/2014	294	Minute Entry. Proceedings held before District Judge Beth Phillips: TELEPHONE CONFERENCES held on 1/24/2014. The transcripts for the teleconferences are sealed. Written Order to follow. (Cordell, Annette) (Entered: 01/24/2014)
01/24/2014	<u>295</u>	ORDER. This Order details the Court's ruling from two teleconferences held on 1/24/2014. Signed on 1/24/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 01/24/2014)
01/24/2014	<u>296</u>	NOTICE OF APPEAL as to <u>170</u> Order on Motion to Intervene, Order on Motion to Stay, 236 Order on Motion for Reconsideration, by Larry C. Flynt. Filing fee \$ 505, receipt number 0866–3812432. (Rothert, Anthony) (Entered: 01/24/2014)
01/24/2014	<u>302</u>	Judgment and Opinion by Court of Appeals, re 211 Appeal no 13–3699, <u>207</u> Notice of Application for Writ, (Attachments: # <u>1</u> Opinion, # <u>2</u> Letter to Publishing)(James, Carrie) (Entered: 01/27/2014)
01/24/2014	<u>303</u>	NOTICE of filing of Judge Order by Court of Appeals re <u>207</u> Notice of Application for Writ, (James, Carrie) (Entered: 01/27/2014)
01/25/2014	<u>297</u>	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>296</u> Notice of Appeal. (Russel, Jeri) (Entered: 01/25/2014)
01/25/2014	<u>298</u>	SUGGESTIONS in support re <u>230</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Motion to dismiss amended complaint for failure to state a claim on which relief can be granted Supplemental Suggestions in Opposition</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. (Attachments: # <u>1</u> Exhibit 8th Cir. en banc decision, # <u>2</u> Exhibit Article on Pharmacy Board Decisions, # <u>3</u> Exhibit Letter on dismissal of Oklahoma Complaint)(Related document(s) <u>230</u>) (Spillane, Michael) (Entered: 01/25/2014)
01/26/2014	<u>299</u>	REPLY SUGGESTIONS to motion re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug</i> filed by Cheryl Ann Pilate on behalf of Plaintiff Herbert Smulls. (Attachments: # <u>1</u> Exhibit A – Wall Street Journal Article, # <u>2</u> Exhibit B – Lab report

		obtained online, # <u>3</u> Exhibit C – Franklin lab report, # <u>4</u> Exhibit D – Nicklasson lab report, # <u>5</u> Exhibit E – Washington Post article, # <u>6</u> Exhibit F – PACER printout, # <u>7</u> Exhibit G – FDA citation, # <u>8</u> Exhibit H – Dr. Sasich Declaration (redacted), # <u>9</u> Exhibit I – Dr. Sasich Declaration (redacted), # <u>10</u> Exhibit J – Lab report for Mr.Smulls' drugs, # <u>11</u> Exhibit K – Article published by St. Louis Public Radio, # <u>12</u> Exhibit L – Article from The LENS)(Related document(s) <u>285</u>) (Pilate, Cheryl) (Entered: 01/26/2014)
01/26/2014	<u>300</u>	REPLY SUGGESTIONS to motion (Sealed) re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug SEALED EXHIBITS FILED IN SUPPORT OF REPLY</i> filed by Cheryl Ann Pilate on behalf of Plaintiff Herbert Smulls. (Attachments: # <u>1</u> Exhibit H – Dr. Sasich Declaration (not redacted), # <u>2</u> Exhibit I – Dr. Sasich Declaration (not redacted))(Related document(s) <u>285</u>) (Pilate, Cheryl) (Entered: 01/26/2014)
01/26/2014	<u>301</u>	MOTION to stay <i>Mr. Smulls' Scheduled Execution for 60 Days Based on First Amendment Violations and Counsels' Conflict of Interest</i> filed by Cheryl Ann Pilate on behalf of Herbert Smulls. Suggestions in opposition/response due by 2/13/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A – Deposition of David Dormire (redacted), # <u>2</u> Exhibit B – Declaration of Dr. Sasich, # <u>3</u> Exhibit C – Article published in The LENS, # <u>4</u> Exhibit D – Article published in The Pitch, # <u>5</u> Exhibit E – Letter from Missouri Board of Pharmacy, # <u>6</u> Exhibit F – Email exchange between counsel)(Pilate, Cheryl) (Entered: 01/26/2014)
01/27/2014	<u>304</u>	SUGGESTIONS in opposition re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug Supplemental Suggestions</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 2/13/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit USP 36 Chapter 467, # <u>2</u> Exhibit En banc decision, # <u>3</u> Exhibit Declaration of Director Dormire, # <u>4</u> Exhibit notice of Denial of Oklahoma Pharmacy Complaint)(Related document(s) <u>285</u>) (Spillane, Michael) (Entered: 01/27/2014)
01/27/2014	<u>305</u>	USCA Case Number from 8th Circuit is 14–1187 for <u>296</u> Notice of Appeal filed by Larry C. Flynt. Briefing schedule entered by the Court of Appeals is attached. Transcript due by 3/10/2014. (Attachments: # <u>1</u> Briefing Schedule)(Bax, Laura) (Entered: 01/27/2014)
01/27/2014	<u>306</u>	REPLY SUGGESTIONS to motion re <u>285</u> MOTION to stay <i>60 days Execution based on new facts that Establish the Unconstitutionality of State's Execution Methods, Including the use of a Substandard Compounded Drug – Plaintiff's Reply and Suggestions in Opposition to Defendants' Supplemental Suggestions in Opposition to Motion for Stay of Execution</i> filed by Cheryl Ann Pilate on behalf of Plaintiff Herbert Smulls. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Related document(s) <u>285</u>) (Pilate, Cheryl) (Entered: 01/27/2014)
01/27/2014	<u>307</u>	SUGGESTIONS in opposition re <u>301</u> MOTION to stay <i>Mr. Smulls' Scheduled Execution for 60 Days Based on First Amendment Violations and Counsels' Conflict of Interest</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 2/13/2014 unless otherwise directed by the court (Related document(s) <u>301</u>) (Spillane, Michael) (Entered: 01/27/2014)

		01/27/2014)
01/27/2014	<u>308</u>	ORDER denying <u>285</u> : Plaintiff Herbert Smulls' Motion for 60–Day Stay of Execution is denied. Signed on 1/27/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 01/27/2014)
01/27/2014	<u>309</u>	Emergency MOTION for order to Modify Court Order Pertaining to Sealing of Dr. Sasich's Declarations to Permit Use of Declaration in Clemency filed by Cheryl Ann Pilate on behalf of Herbert Smulls. Suggestions in opposition/response due by 2/13/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A–1, # <u>2</u> Exhibit B–1, # <u>3</u> Exhibit C)(Pilate, Cheryl) (Entered: 01/27/2014)
01/27/2014	<u>310</u>	NOTICE (SEALED) by Herbert Smulls re <u>309</u> Emergency MOTION for order to Modify Court Order Pertaining to Sealing of Dr. Sasich's Declarations to Permit Use of Declaration in Clemency <i>Exhibits A and B</i> (Attachments: # <u>1</u> Exhibit)(Pilate, Cheryl) (Entered: 01/27/2014)
01/27/2014	<u>311</u>	USCA order denying petition for rehearing 13–3699 re <u>303</u> <u>207</u> Notice of Application for Writ (Bax, Laura) (Entered: 01/27/2014)
01/27/2014		***Remark – ERDC, Potosi, Governor's office, MO Attorney General's office and MO Department of Correction's General Counsel's office notified of Order No. 308 (Bax, Laura) (Entered: 01/27/2014)
01/27/2014	<u>312</u>	MOTION to amend/correct <i>complaint</i> filed by John William Simon on behalf of All Plaintiffs. Suggestions in opposition/response due by 2/13/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Second Amended Complaint, # <u>2</u> Exhibit Exhibit 37 E–Mail from 8th Cir, # <u>3</u> Exhibit Exhibit 38 Pharmacy Board Complaint, # <u>4</u> Exhibit Exhibit 39 Pharmacy Board Letter, # <u>5</u> Exhibit Exhibit 40 Redacted Rehearing Petition, # <u>6</u> Exhibit Exhibit 41 Redacted Deposition of DD, # <u>7</u> Exhibit Exhibit 42 Third Supplemental Declaration of Dr Sasich)(Simon, John) (Entered: 01/27/2014)
01/27/2014	<u>313</u>	NOTICE OF APPEAL by Herbert Smulls. (Pilate, Cheryl) (Entered: 01/27/2014)
01/28/2014	<u>314</u>	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>313</u> Notice of Appeal. (Bax, Laura) (Entered: 01/28/2014)
01/28/2014	<u>315</u>	MOTION for order <i>to preserve physical evidence from Mr. Smulls' execution</i> filed by Cheryl Ann Pilate on behalf of Herbert Smulls. Suggestions in opposition/response due by 2/14/2014 unless otherwise directed by the court. (Pilate, Cheryl) (Entered: 01/28/2014)
01/28/2014	<u>316</u>	USCA Case Number from 8th Circuit is 14–1193 for <u>313</u> Notice of Appeal filed by Herbert Smulls. No briefing schedule entered by the Court of Appeals at this time. (Bax, Laura) (Entered: 01/28/2014)
01/28/2014	<u>317</u>	REPLY SUGGESTIONS to motion re <u>301</u> MOTION to stay <i>Mr. Smulls' Scheduled Execution for 60 Days Based on First Amendment Violations and Counsels' Conflict of Interest – Reply to Defendants' Suggestions in Opposition to Plaintiff Smulls' Motion for 60 Day Stay of Execution</i> filed by Cheryl Ann Pilate on behalf of Plaintiff Herbert Smulls. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>301</u>) (Pilate, Cheryl) (Entered: 01/28/2014)

01/28/2014	318		NOTICE OF HEARING – This is the official notice for this hearing. Telephone Conference set for 1/28/2014 10:30 AM, before District Judge Beth Phillips. Parties are to call in by using the call-in information emailed to them. This Teleconference is for only for parties involved in this litigation.(Cordell, Annette) (Entered: 01/28/2014)
01/28/2014	<u>319</u>		ORDER denying <u>301</u> : Plaintiff Herbert Smulls' Motion for 60-Day Stay of Execution (Doc. 301) is denied. Signed on 1/28/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 01/28/2014)
01/28/2014	320		Minute Entry. Proceedings held before District Judge Beth Phillips: TELEPHONE CONFERENCE held on 1/28/2014. Written Order to follow in separate entry. To order a transcript of this hearing please contact Katie Wirt, 816-512-5608. (Cordell, Annette) (Entered: 01/28/2014)
01/28/2014	<u>321</u>		NOTICE OF APPEAL by Herbert Smulls. (Pilate, Cheryl) (Entered: 01/28/2014)
01/28/2014	<u>322</u>		ORDER granting 309 and 315: Plaintiffs' Emergency Motion to Modify the Court Order Pertaining to Sealing of Dr. Sasich's Declaration (Doc. 309) is GRANTED; Plaintiff Smulls' Emergency Motion to Preserve Evidence (Doc. 315) is GRANTED. Signed on 1/28/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 01/28/2014)
01/28/2014	<u>323</u>		TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>321</u> Notice of Appeal. (Bax, Laura) (Entered: 01/28/2014)
01/28/2014	324		NOTICE OF HEARING – This is the official notice for this hearing. Telephone Conference set for 1/28/2014 01:30 PM, before District Judge Beth Phillips. Parties have been notified by email regarding call-in information. This Teleconference is only for parties involved in this litigation.(Cordell, Annette) (Entered: 01/28/2014)
01/28/2014	<u>325</u>		USCA Case Number from 8th Circuit is 14-1200 for <u>321</u> Notice of Appeal filed by Herbert Smulls. This appeal is being consolidated with 14-1193. No briefing schedule was entered by the Court of Appeals at this time. (Bax, Laura) (Entered: 01/28/2014)
01/28/2014			NOTICE OF HEARING CANCELLATION – The Teleconference scheduled for January 28, 2014, 1:30 pm has been CANCELLED. (Cordell, Annette) (Entered: 01/28/2014)
01/28/2014	<u>326</u>		NOTICE (SEALED) by Russell E. Bucklew re <u>312</u> MOTION to amend/correct <i>complaint UNREDACTED VERSION OF EXHIBIT 1 (COMPLAINT)</i> (Simon, John) (Entered: 01/28/2014)
01/28/2014	<u>327</u>		ORDER of US COURT OF APPEALS as to <u>313</u> <u>321</u> Notice of Appeal filed by Herbert Smulls (Bax, Laura) (Entered: 01/28/2014)
01/28/2014	<u>328</u>		ORDER of US SUPREME COURT (Bax, Laura) (Entered: 01/29/2014)
01/29/2014	329		ORDER of US SUPREME COURT as to <u>313</u> & <u>321</u> Notice of Appeal filed by Herbert Smulls (Bax, Laura) Modified on 1/29/2014– The incorrect document was attached and therefore deleted. (Bax, Laura). (Entered: 01/29/2014)

01/29/2014	<u>330</u>		ORDER of US SUPREME COURT (Bax, Laura) (Entered: 01/29/2014)
01/29/2014	<u>331</u>		ORDER of US SUPREME COURT (Bax, Laura) (Entered: 01/29/2014)
01/29/2014			NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 1/29/2014 as Document No. 329, Order of US Supreme Court. The document has been deleted as the incorrect document was attached. This is a text entry only – no document is attached. (Bax, Laura) (Entered: 01/29/2014)
01/29/2014	<u>332</u>		CORRECTED ORDER of US COURT OF APPEALS as to <u>313 321</u> Notices of Appeal filed by Herbert Smulls (Bax, Laura) (Entered: 01/29/2014)
01/29/2014	<u>333</u>		ORDER of US COURT OF APPEALS as to <u>313 321</u> Notice of Appeal filed by Herbert Smulls (Bax, Laura) (Entered: 01/29/2014)
01/30/2014	<u>335</u>		Appeal Remark re <u>321</u> Notice of Appeal : Supreme Court Order (James, Carrie) (Entered: 02/03/2014)
01/30/2014	<u>336</u>		Appeal Remark re <u>321</u> Notice of Appeal : Supreme Court Order (Attachments: # <u>1</u> Memo)(James, Carrie) (Entered: 02/03/2014)
01/31/2014	<u>334</u>		NOTICE OF HEARING – This is the official notice for this hearing. Telephone Conference set for February 3, 2014, at 9:45 a.m., before District Judge Beth Phillips. Parties have been notified by email regarding call-in information. This Teleconference is only for parties involved in this litigation. (Cordell, Annette) (Entered: 01/31/2014)
02/03/2014	<u>337</u>		TELEPHONE CONFERENCE proceedings held on 2/3/2014 held before District Judge Beth Phillips. Order from the Court to follow. To order a transcript of this hearing please contact Katie Wirt, 816-512-5608. (McIlvain, Kelly) (Entered: 02/03/2014)
02/03/2014	<u>338</u>		AMENDED COMPLAINT (<i>Second, Filed by Leave of Court Granted on Even Date Herewith</i> , against All Plaintiffs filed by John William Simon on behalf of All Plaintiffs. (Attachments: # <u>1</u> Exhibit Press Release by Governor, # <u>2</u> Exhibit Execution Protocol Dated 2013-10-22, # <u>3</u> Exhibit Press Release from DOC, # <u>4</u> Exhibit Dershwitz Document, # <u>5</u> Exhibit Heath Declaration of 2013-11-07, # <u>6</u> Exhibit Sasich Affidavit, # <u>7</u> Exhibit State's Exhibits in SCOMO, # <u>8</u> Exhibit Sasich Supplemental Declaration 2013-11-15, # <u>9</u> Exhibit Sunshine-Law Response to St Louis Public Radio, # <u>10</u> Exhibit Sunshine-Law Response to ACLU, # <u>11</u> Exhibit Sunshine-Law Response to Senator Bray, # <u>12</u> Exhibit Sunshine-Law Response to Messrs Edwards and Worthington, # <u>13</u> Exhibit Sunshine-Law Response to Plaintiffs Bucklew and Taylor, # <u>14</u> Exhibit AP Report of President's Signature of Federal Statute, # <u>15</u> Exhibit Execution Warrant Against Then-Plaintiff Franklin, # <u>16</u> Exhibit District-Court Stay on Ford-Panetti Grounds, # <u>17</u> Exhibit E-Mail Transitting Order Granting Stay on Ford-Panetti Grounds, # <u>18</u> Exhibit Order Vacating District Court Stay in This Case, # <u>19</u> Exhibit E-Mail Transmitting Eighth-Circuit Order Vacating Stay on Ford-Panetti Grounds, # <u>20</u> Exhibit Order Vacating Stay on Ford-Panetti Grounds, # <u>21</u> Exhibit E-Mail Transmitting Eighth-Circuit Order Vacating Stay on Ford-Panetti Grounds, # <u>22</u> Exhibit Eighth-Circuit Order Denying Reh'g of Vacatur of Stay in This Case, # <u>23</u> Exhibit Eighth-Circuit Order Denying Reh'g of Vacatur of Stay on Ford-Panetti Grounds, # <u>24</u> Exhibit Application to SCOTUS for Stay in This

		Case, # <u>25</u> Exhibit E-Mail Transmitting Application in SCOTUS for Stay in This Case, # <u>26</u> Exhibit Application in SCOTUS for Stay on Ford-Panetti Grounds, # <u>27</u> Exhibit E-Mail Transmitting Application in SCOTUS for Stay on Ford-Panetti Grounds, # <u>28</u> Exhibit Notice of Electronic Filing of Doc No 167, # <u>29</u> Exhibit SCOTUS Denial of Stay in This Case, # <u>30</u> Exhibit SCOTUS Denial of Stay on Ford-Panetti Grounds, # <u>31</u> Exhibit Transmittal E-Mail from SCOTUS, # <u>32</u> Exhibit E-Mail to Opposing Counsel, # <u>33</u> Exhibit NYT Coverage of Franklin Killing, # <u>34</u> Exhibit E-Mail from Defendants' Counsel's Blackberry, # <u>35</u> Exhibit Portion of Protocol Disclosed in Ringo v Lombardi, # <u>36</u> Exhibit E-Mail from 8th Cir Denying Motions for Stay, # <u>37</u> Exhibit E-Mail from 8th Cir Confirming Filing of Petition for Rehearing Before Killing, # <u>38</u> Exhibit Pharmacy Board Complaint, # <u>39</u> Exhibit Pharmacy Board Denying Complaint Because Defendants Hid Evidence, # <u>40</u> Exhibit Petition for Rehearing from 8th Cir Opinion of 2014-01-24, # <u>41</u> Exhibit Redacted Deposition of Defendant Dormire, # <u>42</u> Exhibit Third Supplemental Declaration of Dr Sasich)(Simon, John) (Entered: 02/03/2014)
02/03/2014	<u>339</u>	ORDER. A teleconference was held on 2/3/14. This Order details the Court's rulings. Motion <u>230</u> – Defendants' Motion to Dismiss for Failure to State a Claim is denied as moot; Motion <u>267</u> – Plaintiffs' Motion for leave to file a surreply is denied as moot, and Motion <u>312</u> – Plaintiffs' Motion fo file an amended complaint is granted. Signed on 2/3/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 02/03/2014)
02/03/2014	<u>340</u>	NOTICE (SEALED) by Russell E. Bucklew re <u>338</u> Amended Complaint,,,,,,,,, <i>UNREDACTED COPY FOR COURT</i> (Simon, John) (Entered: 02/03/2014)
02/04/2014	<u>341</u>	ORDER denying <u>255</u> : Plaintiffs' Motion to Preserve Evidence is DENIED. Signed on 2/4/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 02/04/2014)
02/04/2014	<u>342</u>	NOTICE of appearance by Matthew Brady Larsen on behalf of Michael A. Taylor (Attorney Matthew Brady Larsen added to party Michael A. Taylor(pty:pla))(Larsen, Matthew) (Entered: 02/04/2014)
02/04/2014	<u>343</u>	MOTION to stay <i>execution pending certiorari</i> filed by Matthew Brady Larsen on behalf of Michael A. Taylor. Suggestions in opposition/response due by 2/21/2014 unless otherwise directed by the court. (Larsen, Matthew) (Entered: 02/04/2014)
02/04/2014	345	ORDER. Defendants' response to Plaintiffs' Motion to Stay Execution (Doc. <u>343</u>) is due on or before February 10, 2014. Signed on 2/4/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 02/04/2014)
02/05/2014	<u>346</u>	NOTICE of filing of Mandate by Eighth Circuit Court of Appeals re 211 Appeal Remark (James, Carrie) (Entered: 02/05/2014)
02/05/2014	<u>347</u>	RETURN OF SERVICE (non cmp) re <u>319</u> Order on Motion to Stay. Served on Herbert Smulls on 1/28/14. (Russel, Jeri) (Entered: 02/05/2014)
02/10/2014	<u>349</u>	SUGGESTIONS in opposition re <u>343</u> MOTION to stay <i>execution pending certiorari</i> filed by Michael Joseph Spillane on behalf of Defendant George A.

		Lombardi. Reply suggestions due by 2/27/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Smulls Stay Denial, # <u>2</u> Exhibit Nicklasson Stay Denial, # <u>3</u> Exhibit Franklin Order Vacating Stay, # <u>4</u> Exhibit U.S. Supreme Court Order and Pleadings, # <u>5</u> Exhibit U.S. Supreme Court Docket Sheet)(Related document(s) <u>343</u>) (Spillane, Michael) (Entered: 02/10/2014)
02/11/2014	<u>350</u>	REPLY SUGGESTIONS to motion re <u>343</u> MOTION to stay <i>execution pending certiorari</i> filed by Matthew Brady Larsen on behalf of Plaintiff Michael A. Taylor. (Related document(s) <u>343</u>) (Larsen, Matthew) (Entered: 02/11/2014)
02/13/2014	<u>351</u>	CERTIFICATE OF SERVICE by David R. Dormire <i>Answers to Plaintiffs 5th Set of Interrogatories directed to Defendant Dormire</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 02/13/2014)
02/13/2014	<u>352</u>	CERTIFICATE OF SERVICE by David R. Dormire <i>Defendant's Response to Plaintiffs 5th Request for Production of Documents</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 02/13/2014)
02/18/2014	<u>353</u>	MOTION to stay <i>execution based on no lawful means of proceeding on February 26th</i> filed by Matthew Brady Larsen on behalf of Michael A. Taylor. Suggestions in opposition/response due by 3/7/2014 unless otherwise directed by the court. (Larsen, Matthew) (Entered: 02/18/2014)
02/18/2014	<u>354</u>	MOTION to dismiss case <i>second amended complaint</i> , MOTION to dismiss for lack of jurisdiction <i>and failure to state a claim</i> filed by Michael Joseph Spillane on behalf of George A. Lombardi. Suggestions in opposition/response due by 3/7/2014 unless otherwise directed by the court. (Spillane, Michael) (Entered: 02/18/2014)
02/18/2014	355	ORDER re <u>353</u> : Defendants' response to Plaintiff's Motion to stay <i>execution based on no lawful means of proceeding on February 26th</i> filed by Michael A. Taylor (Doc. 353) is DUE by noon on THURSDAY, FEBRUARY 20, 2014. Signed on 2/18/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 02/18/2014)
02/19/2014	<u>356</u>	CERTIFICATE OF SERVICE by David R. Dormire <i>Defendant Dormire's Second Supplemental Answers to First Set of Interrogatories</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 02/19/2014)
02/19/2014	<u>357</u>	CERTIFICATE OF SERVICE by David R. Dormire <i>Supplemental Answers to Plaintiffs' Third Set of Interrogatories</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 02/19/2014)
02/19/2014	<u>358</u>	CERTIFICATE OF SERVICE by David R. Dormire <i>Supplemental Answers to Plaintiffs' Fourth Set of Interrogatories</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 02/19/2014)
02/19/2014	<u>359</u>	CERTIFICATE OF SERVICE by David R. Dormire <i>3rd Supplemental Answers to Plaintiffs' First Set of Interrogatories</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 02/19/2014)

02/19/2014	<u>360</u>		SUGGESTIONS in opposition re <u>353</u> MOTION to stay <i>execution based on no lawful means of proceeding on February 26th</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 3/10/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Smulls Stay Denial, # <u>2</u> Exhibit Nicklasson Stay Denial, # <u>3</u> Exhibit Franklin Vacation of Stay, # <u>4</u> Exhibit Franklin Witness Statements, # <u>5</u> Exhibit Nicklasson Witness Statements, # <u>6</u> Exhibit Smulls Witness Statements, # <u>7</u> Exhibit Threatening Letter, # <u>8</u> Exhibit Oklahoma Complaint)(Related document(s) <u>353</u>) (Spillane, Michael) (Entered: 02/19/2014)
02/20/2014	<u>361</u>		REPLY SUGGESTIONS to motion re <u>353</u> MOTION to stay <i>execution based on no lawful means of proceeding on February 26th</i> filed by Matthew Brady Larsen on behalf of Plaintiff Michael A. Taylor. (Related document(s) <u>353</u>) (Larsen, Matthew) (Entered: 02/20/2014)
02/21/2014	<u>362</u>		MOTION for extension of time to <i>serve plaintiffs' expert disclosures</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 3/10/2014 unless otherwise directed by the court. (Luby, Joseph) (Entered: 02/21/2014)
02/21/2014	<u>363</u>		MOTION to stay <i>of execution based on Equal Protection and Due Process Clauses</i> filed by John William Simon on behalf of Michael A. Taylor. Suggestions in opposition/response due by 3/10/2014 unless otherwise directed by the court. (Simon, John) (Entered: 02/21/2014)
02/21/2014	<u>364</u>		MOTION for leave to file <i>Exhibits 12–15 & 17–21 to Motion for Stay Based on Equal Protection and Due Process Clauses</i> filed by John William Simon on behalf of Michael A. Taylor. Suggestions in opposition/response due by 3/10/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Smulls SCOTUS Stay on Batson Claim, # <u>2</u> Exhibit 8th Cir Stay Pending Cert on Smulls Claim in Zink v Lombardi, # <u>3</u> Exhibit First E–Mail re Renewed–Conditional Stay Motion, # <u>4</u> Exhibit E–Mail Conveying Order Containing Dissenting Opinion, # <u>5</u> Exhibit SCOTUS E–Mail Showing Pendency of Matter Through 2224 CST, # <u>6</u> Exhibit Smulls Counsel E–Mails to Opposing Counsel, # <u>7</u> Exhibit Disclosed Portion of Protocol Mandated by This Court to Allow BEFORE–THE–FACT Judicial Review, # <u>8</u> Exhibit Posthumous Denial of Rehearing with Dissenting Opinion by Bye, J., Joined by Kelly, J.)(Simon, John) (Entered: 02/21/2014)
02/21/2014	<u>365</u>		MOTION for leave to file <i>Exhibit 16 in Support of Motion for Stay Based on Equal Protection and Due Process Clauses</i> filed by John William Simon on behalf of Michael A. Taylor. Suggestions in opposition/response due by 3/10/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit One of Two E–Mails re Smulls Stay in 8th Cir)(Simon, John) (Entered: 02/21/2014)
02/21/2014	<u>366</u>		MOTION for leave to file <i>Exhibits 1–11 to Motion for Stay Based on Equal Protection and Due Process Clauses (RE–SENDING)</i> filed by John William Simon on behalf of Michael A. Taylor. Suggestions in opposition/response due by 3/10/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Vacatur of Franklin Stay, # <u>2</u> Exhibit Rehearing Denial re Franklin Stay, # <u>3</u> Exhibit SCOTUS E–Mail re Franklin, # <u>4</u> Exhibit ECF Notice of Filing of Renewed Stay Motion Before This Court, # <u>5</u> Exhibit E–Mail from SCOTUS re Franklin, # <u>6</u> Exhibit E–Mail from Plaintiff Counsel to Opposing Counsel, #

		<p><u>7</u> Exhibit NYT Coverage with TOD of Franklin, # <u>8</u> Exhibit E–Mailed Panel Denial by 8th Cir, # <u>9</u> Exhibit E–Mail from 8th Cir Confirming Time by Which It Filed Rehearing Petition, # <u>10</u> Exhibit MissouriNet Coverage of Nicklasson Killing, # <u>11</u> Exhibit The Guardian Coverage of Nicklasson Killing)(Simon, John) (Entered: 02/21/2014)</p>
02/21/2014	<u>367</u>	<p>SUGGESTIONS in opposition re <u>363</u> MOTION to stay <i>of execution based on Equal Protection and Due Process Clauses</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 3/10/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Jan. 24, 2014 Order setting execution date, # <u>2</u> Exhibit Nicklasson Stay application Dec. 3,2013, # <u>3</u> Exhibit Document 343 stay motion filed by Taylor, # <u>4</u> Exhibit Document 353 Stay motion filed by taylor, # <u>5</u> Exhibit 97–4055 Stay Motion filed by Taylor)(Related document(s) <u>363</u>) (Spillane, Michael) (Entered: 02/21/2014)</p>
02/22/2014	<u>368</u>	<p>REPLY SUGGESTIONS to motion re <u>363</u> MOTION to stay <i>of execution based on Equal Protection and Due Process Clauses</i>, <u>366</u> MOTION for leave to file <i>Exhibits 1–11 to Motion for Stay Based on Equal Protection and Due Process Clauses (RE–SENDING)</i>, <u>364</u> MOTION for leave to file <i>Exhibits 12–15 & 17–21 to Motion for Stay Based on Equal Protection and Due Process Clauses</i>, <u>365</u> MOTION for leave to file <i>Exhibit 16 in Support of Motion for Stay Based on Equal Protection and Due Process Clauses</i> filed by John William Simon on behalf of Plaintiff Michael A. Taylor. (Related document(s) <u>363</u> , <u>366</u> , <u>364</u> , <u>365</u>) (Simon, John) (Entered: 02/22/2014)</p>
02/24/2014	<u>369</u>	<p>ORDER denying <u>343</u> and <u>353</u> : Plaintiff Taylor's Motions for Stay of Execution are denied. Signed on 2/24/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 02/24/2014)</p>
02/24/2014	<u>370</u>	<p>ORDER denying <u>363</u> : Plaintiff Taylor's Motion for Stay of Execution is denied. Plaintiffs' Motions for Leave to File Exhibits <u>364</u> , <u>365</u> , and <u>366</u> are granted. Signed on 2/24/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 02/24/2014)</p>
02/24/2014	<u>371</u>	<p>NOTICE OF APPEAL by Michael A. Taylor. (Larsen, Matthew) (Entered: 02/24/2014)</p>
02/24/2014	<u>372</u>	<p>TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>371</u> Notice of Appeal. (Bax, Laura) (Entered: 02/24/2014)</p>
02/24/2014	<u>373</u>	<p>USCA Case Number from 8th Circuit is 14–1388 for <u>371</u> Notice of Appeal filed by Michael A. Taylor. (Bax, Laura) (Entered: 02/24/2014)</p>
02/25/2014	<u>374</u>	<p>USCA Judgment and/or Opinion as to <u>198</u> Notice of Appeal filed by Allen L. Nicklasson This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (James, Carrie) (Entered: 02/25/2014)</p>
02/25/2014	<u>375</u>	<p>MANDATE of US COURT OF APPEALS as to <u>198</u> Notice of Appeal filed by Allen L. Nicklasson with mandate issued on 2/25/14. (James, Carrie) (Entered: 02/25/2014)</p>
02/25/2014	<u>376</u>	

		USCA Judgment and/or Opinion as to <u>371</u> Notice of Appeal filed by Michael A. Taylor This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (James, Carrie) (Entered: 02/25/2014)
02/25/2014	<u>377</u>	USCA Judgment and/or Opinion as to <u>313</u> Notice of Appeal filed by Herbert Smulls, <u>321</u> Notice of Appeal filed by Herbert Smulls This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (James, Carrie) (Entered: 02/25/2014)
02/25/2014	<u>378</u>	MANDATE of US COURT OF APPEALS as to <u>313</u> Notice of Appeal filed by Herbert Smulls, <u>321</u> Notice of Appeal filed by Herbert Smulls with mandate issued on 2/25/14. (James, Carrie) (Entered: 02/25/2014)
02/26/2014	<u>379</u>	WRIT OF CERTIORARI Denied. Eighth Circuit Case Number: 14-1388. (Attachments: # <u>1</u> Memo denying cert 13-88544, # <u>2</u> Supreme Court Order 13-8855, # <u>3</u> District Court Memo denying cert 13-8855, # <u>4</u> Supreme Court order 13-8856, # <u>5</u> District Court Memo denying cert 13-8856)(James, Carrie) (Entered: 02/26/2014)
02/26/2014	<u>380</u>	MANDATE of US COURT OF APPEALS as to <u>371</u> Notice of Appeal filed by Michael A. Taylor with mandate issued on 2/26/14. (James, Carrie) (Entered: 02/26/2014)
02/26/2014	<u>381</u>	ORDER of US COURT OF APPEALS (James, Carrie) (Entered: 02/26/2014)
03/03/2014	<u>382</u>	MOTION for extension of time to file response/reply as to <u>354</u> MOTION to dismiss case <i>second amended complaint</i> MOTION to dismiss for lack of jurisdiction <i>and failure to state a claim</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 3/20/2014 unless otherwise directed by the court. (Related document(s) <u>354</u>) (Luby, Joseph) (Entered: 03/03/2014)
03/05/2014	<u>383</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>concerning Plaintiffs' Sixth Interrogatories to Defendant Dormire and Sixth Request for Production of Documents to All Defendants</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink.(Luby, Joseph) (Entered: 03/05/2014)
03/07/2014	384	ORDER granting <u>382</u> : Plaintiffs' motion for extension of time to file opposition to Defendant's Motion to Dismiss Second Amended Complaint is GRANTED. Plaintiffs have up to and including March 21, 2014, to file their opposition. Signed on 3/7/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 03/07/2014)
03/07/2014	<u>385</u>	RETURN OF SERVICE (non cmp)Orders as to Michael A. Taylor ;3/16/2014 Returned unexecuted-Plaintiff executed (Travis, Kendra) (Entered: 03/07/2014)

03/14/2014	<u>386</u>		PROPOSED SCHEDULING ORDER by David Zink. (Parish, Kathryn) (Entered: 03/14/2014)
03/14/2014	387		NOTICE OF HEARING – This is the official notice for this hearing. Telephone Conference set for 3/19/2014 10:00 AM, regarding parties' proposed amended scheduling order (Doc. 386), before District Judge Beth Phillips. Parties are to call in by dialing (877) 336–1839 and entering access code 4259420. This teleconference is limited to the parties in this case.(Cordell, Annette) (Entered: 03/14/2014)
03/17/2014	<u>388</u>		MOTION to stay <i>execution</i> filed by Jennifer Herndon on behalf of Jeffrey R. Ferguson. Suggestions in opposition/response due by 4/3/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Amicus Curiae Brief of the Ethics Bureau at Yale, # <u>2</u> Exhibit George Lombardi Legislative Hearing Testimony)(Herndon, Jennifer) (Entered: 03/17/2014)
03/18/2014	<u>389</u>		SUGGESTIONS in opposition re <u>388</u> MOTION to stay <i>execution</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 4/4/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Witness statements from Franklin, Nicklasson, Smulls, and Taylor executions, # <u>2</u> Exhibit Documents from Smulls & Taylor stay litigation, # <u>3</u> Exhibit Order denying Taylor stay application)(Related document(s) <u>388</u>) (Spillane, Michael) (Entered: 03/18/2014)
03/19/2014	<u>391</u>		NOTICE of filing <i>Notice of Withdrawal</i> by Michael A. Taylor (Larsen, Matthew) (Entered: 03/19/2014)
03/20/2014	392		Minute Entry. Proceedings held before District Judge Beth Phillips: TELEPHONE CONFERENCE held on 3/19/2014. Amended Scheduling and Trial Order to be entered in separate docket entry. To order a transcript of this hearing please contact Katie Wirt, 816–512–5608. (Cordell, Annette) (Entered: 03/20/2014)
03/20/2014	<u>393</u>		AMENDED SCHEDULING AND TRIAL ORDER: Discovery due by 7/24/2014. Dispositive Motions due by 8/13/2014. Pretrial Conference set for 9/3/2014 10:00 AM, via teleconference before District Judge Beth Phillips. Bench Trial set for 9/15/2014 08:30 AM in District Courtroom 4B, Jefferson City (VDJJC) before District Judge Beth Phillips. Signed on 3/20/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 03/20/2014)
03/20/2014	<u>394</u>		ORDER denying <u>193</u> and <u>217</u> : Plaintiffs' Motions for Sanctions are DENIED. Signed on 3/20/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 03/20/2014)
03/20/2014	<u>395</u>		CERTIFICATE OF SERVICE by David R. Dormire <i>Defendant Dormire's Response to Plaintiff's Sixth Request for Production of Documents</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 03/20/2014)
03/20/2014	<u>396</u>		CERTIFICATE OF SERVICE by David R. Dormire <i>Defendant Dormire's Answers to Plaintiffs' Sixth Set of Interrogatories to Defendant Dormire</i> filed by Susan D. Boresi on behalf of Defendant David R. Dormire.(Boresi, Susan) (Entered: 03/20/2014)
03/21/2014	<u>397</u>		

		MOTION for protective order <i>Regarding the Deposition of M7</i> filed by Susan D. Boresi on behalf of All Defendants. Suggestions in opposition/response due by 4/7/2014 unless otherwise directed by the court. (Boresi, Susan) (Entered: 03/21/2014)
03/21/2014	<u>398</u>	SUGGESTIONS in opposition re <u>354</u> MOTION to dismiss case <i>second amended complaint</i> MOTION to dismiss for lack of jurisdiction <i>and failure to state a claim</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 4/7/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit 1 – Motion to Vacate Franklin Stay of Execution, # <u>2</u> Exhibit 2 – Eighth Circuit Order Vacating Franklin Stay, # <u>3</u> Exhibit 3 – Zink cert petition, # <u>4</u> Exhibit 4 – Zink cert reply)(Related document(s) <u>354</u>) (Luby, Joseph) (Entered: 03/21/2014)
03/21/2014	<u>399</u>	ORDER denying <u>388</u> : Plaintiff Jeffrey R. Ferguson's Motion for Stay of Execution is denied. Signed on 3/21/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 03/21/2014)
03/22/2014	<u>400</u>	NOTICE OF APPEAL as to <u>399</u> Order on Motion to Stay by Jeffrey R. Ferguson. (Herndon, Jennifer) (Entered: 03/22/2014)
03/22/2014	<u>401</u>	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>400</u> Notice of Appeal. (Williams, Karyn) (Entered: 03/23/2014)
03/24/2014	402	ORDER setting deadlines for Doc. 397. Plaintiffs' response to Defendants' Motion for Protective Order shall be due March 28, 2014. Defendants' reply shall then be due April 2, 2014. Signed on 3/24/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 03/24/2014)
03/24/2014	<u>403</u>	USCA Case Number from Eighth Circuit is 14–1693 for <u>400</u> Notice of Appeal filed by Jeffrey R. Ferguson. Briefing schedule not entered by the Court of Appeals. (James, Carrie) (Entered: 03/24/2014)
03/25/2014	<u>404</u>	ORDER of US COURT OF APPEALS as to <u>400</u> Notice of Appeal filed by Jeffrey R. Ferguson (Williams, Karyn) (Entered: 03/25/2014)
03/25/2014	<u>405</u>	ORDER of US COURT OF APPEALS denying petition for enbanc rehearing. (Williams, Karyn) (Entered: 03/25/2014)
03/25/2014	<u>406</u>	ORDER of US SUPREME COURT. (Williams, Karyn) (Entered: 03/25/2014)
03/25/2014	<u>407</u>	ORDER of US SUPREME COURT. (Williams, Karyn) (Entered: 03/25/2014)
03/25/2014	<u>408</u>	ORDER of US SUPREME COURT. (Williams, Karyn) (Entered: 03/25/2014)
03/25/2014	<u>409</u>	ORDER of US SUPREME COURT. (Williams, Karyn) (Entered: 03/25/2014)
03/25/2014	<u>410</u>	ORDER of US SUPREME COURT. (Williams, Karyn) (Entered: 03/25/2014)
03/27/2014	411	

		ORDER finding as moot <u>362</u> : Motion for extension of time regarding expert disclosures is found to be moot as this issue is addressed in the Amended Scheduling Order (Doc. 393). Signed on 3/27/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 03/27/2014)
03/27/2014	<u>412</u>	USCA Judgment as to <u>400</u> Notice of Appeal filed by Jeffrey R. Ferguson This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (James, Carrie) (Entered: 03/27/2014)
03/27/2014	<u>413</u>	MANDATE of US COURT OF APPEALS as to <u>400</u> Notice of Appeal filed by Jeffrey R. Ferguson with mandate issued on 3/27/14. (James, Carrie) (Entered: 03/27/2014)
03/27/2014		WRIT OF CERTIORARI Petition filed. Eighth Circuit Case Number: 14-1693. This is a text entry only. There is no document attached. (James, Carrie) (Entered: 03/27/2014)
03/27/2014	<u>414</u>	WRIT OF CERTIORARI Denied. Eighth Circuit Case Number: 14-1693. Supreme Court Case Number: 13-9374. (Attachments: # <u>1</u> District Court Memo)(James, Carrie) (Entered: 03/27/2014)
03/28/2014	<u>415</u>	SUGGESTIONS in opposition re <u>397</u> MOTION for protective order <i>Regarding the Deposition of M7</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 4/14/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit 1 – SLPR article, # <u>2</u> Exhibit 2 – Pitch Weekly and Lens articles, # <u>3</u> Exhibit 3 – "Oklahoma Judge Tosses State Execution Law", # <u>4</u> Exhibit 4 – Levin order from Travis County, # <u>5</u> Exhibit 5 – Fifth Circuit ruling in LeBlanc)(Related document(s) <u>397</u>) (Luby, Joseph) (Entered: 03/28/2014)
04/02/2014	<u>416</u>	SUGGESTIONS in support re <u>397</u> MOTION for protective order <i>Regarding the Deposition of M7</i> reply suggestions in support of motion for protective order filed by Gregory Michael Goodwin on behalf of Defendant George A. Lombardi. (Attachments: # <u>1</u> Exhibit Oct 18 2013 Protocol, # <u>2</u> Exhibit Woodlands Letter, # <u>3</u> Exhibit Seth Henry Smith Affidavit, # <u>4</u> Exhibit Texas Letter Re: Threats, # <u>5</u> Exhibit Sells 5th Cir. Opinion, # <u>6</u> Exhibit Texas AG Terror Threat)(Related document(s) <u>397</u>) (Attorney Gregory Michael Goodwin added to party George A. Lombardi(pty:dft))(Goodwin, Gregory) (Entered: 04/02/2014)
04/03/2014	<u>417</u>	RETURN OF SERVICE (non cmp) re <u>399</u> Order on Motion to Stay, served on Eastern Reception, Diagnostic and Correctional Center on 3/26/14(Howard, Linda) (Entered: 04/03/2014)
04/04/2014	<u>418</u>	MOTION to intervene filed by Michael J. Gorla on behalf of Richard Strong. Suggestions in opposition/response due by 4/21/2014 unless otherwise directed by the court. (Attorney Michael J. Gorla added to party Richard Strong(pty:intvp))(Gorla, Michael) (Entered: 04/04/2014)

04/07/2014	<u>419</u>		MOTION for leave to file <i>Surreply Suggestions in Opposition to Defendants' Motion for Protective Order</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 4/24/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Proposed Surreply in Opposition to Defendants' Motion for Protective Order, # <u>2</u> Exhibit 1 – KC Star, "Scant Evidence of Threats to Execution Drugmakers")(Luby, Joseph) (Entered: 04/07/2014)
04/07/2014	<u>420</u>		SUGGESTIONS in support re <u>354</u> MOTION to dismiss case <i>second amended complaint</i> MOTION to dismiss for lack of jurisdiction <i>and failure to state a claim</i> Reply Suggestions in Support of Motion to Dismiss Second Amended Complaint filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. (Related document(s) <u>354</u>) (Spillane, Michael) (Entered: 04/07/2014)
04/07/2014	<u>421</u>		MOTION to intervene <i>as plaintiff under federal rule of civil procedure 24</i> filed by Kent E. Gipson on behalf of Marcellus Williams. Suggestions in opposition/response due by 4/24/2014 unless otherwise directed by the court. (Attorney Kent E. Gipson added to party Marcellus Williams(pty:pla))(Gipson, Kent) (Entered: 04/07/2014)
04/11/2014	<u>422</u>		MOTION for leave to file <i>surreply suggestion in opposition to motion to dismiss second amended complaint</i> filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 4/28/2014 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit 1 – Surreply in opposition to motion to dismiss second amended complaint)(Luby, Joseph) (Entered: 04/11/2014)
04/15/2014	<u>423</u>		MOTION to stay <i>Execution</i> filed by Eric W. Butts on behalf of William Rousan. Suggestions in opposition/response due by 5/2/2014 unless otherwise directed by the court. (Butts, Eric) (Entered: 04/15/2014)
04/16/2014	<u>424</u>		SUGGESTIONS in opposition re <u>423</u> MOTION to stay <i>Execution</i> filed by Michael Joseph Spillane on behalf of Defendant George A. Lombardi. Reply suggestions due by 5/5/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit Witness Statements)(Related document(s) <u>423</u>) (Spillane, Michael) (Entered: 04/16/2014)
04/18/2014	<u>425</u>		ORDER denying <u>423</u> : Plaintiff William Rousan's Motion for Stay of Execution is denied. Signed on 4/18/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 04/18/2014)
04/18/2014	<u>426</u>		NOTICE OF APPEAL as to <u>425</u> Order on Motion to Stay by William Rousan. (Butts, Eric) (Entered: 04/18/2014)
04/18/2014	<u>427</u>		TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>426</u> Notice of Appeal. (Bax, Laura) (Entered: 04/18/2014)
04/21/2014	<u>428</u>		USCA Case Number from Eighth Circuit is 14–1919 for <u>426</u> Notice of Appeal filed by William Rousan. Briefing schedule not entered by the Court of Appeals. (James, Carrie) (Entered: 04/21/2014)
04/21/2014	<u>429</u>		ORDER of US COURT OF APPEALS: Motion for stay of execution is denied. (Bax, Laura) (Entered: 04/21/2014)

04/22/2014	<u>430</u>		ORDER of US COURT OF APPEALS: The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied. (Bax, Laura) (Entered: 04/22/2014)
04/23/2014	<u>431</u>		WRIT OF CERTIORARI Denied. Eighth Circuit Case Number: 14-1919. Supreme Court Case Number: 13-9835. (Attachments: # <u>1</u> District Court Memo)(James, Carrie) (Entered: 04/23/2014)
04/23/2014	<u>432</u>		AMENDED ORDER of US COURT OF APPEALS denying petition for enbanc rehearing (James, Carrie) (Entered: 04/23/2014)
04/25/2014	<u>433</u>		STATUS REPORT <i>Notice of recent decision that may be helpful to the Court</i> by George A. Lombardi. (Spillane, Michael) (Entered: 04/25/2014)
04/28/2014	<u>434</u>		USCA Judgment as to <u>426</u> Notice of Appeal filed by William Rousan This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (Bax, Laura) (Entered: 04/28/2014)
04/28/2014	<u>435</u>		MANDATE of US COURT OF APPEALS as to <u>426</u> Notice of Appeal filed by William Rousan with mandate issued on 4/28/14. (Bax, Laura) (Entered: 04/28/2014)
04/29/2014	<u>436</u>		RETURN OF SERVICE (non cmp) Of service of order on Eastern Reception Diagnostic and Correctional Center, Bonne Terre, MO, by serving Potosi Correctonal Center, on 4/18/14 (James, Carrie) (Entered: 04/29/2014)
05/02/2014	<u>437</u>	74	ORDER. Defendants' Motion to Dismiss <u>354</u> is GRANTED for Counts II through X. The Court DEFERS RULING on Count I. Plaintiffs are permitted to amend only Count I to comply with the pleading standard described in this Order within 7 days of the date of this Order. Discovery is STAYED. Signed on 5/2/2014 by District Judge Beth Phillips. (Cordell, Annette) (Entered: 05/02/2014)
05/04/2014	<u>438</u>		MOTION for extension of time to amend <u>437</u> Order on Motion to Dismiss Case, Order on Motion to Dismiss/Lack of Jurisdiction,, filed by Elizabeth Unger Carlyle on behalf of All Plaintiffs. Suggestions in opposition/response due by 5/22/2014 unless otherwise directed by the court. (Related document(s) <u>437</u>) (Carlyle, Elizabeth) (Entered: 05/04/2014)
05/05/2014	439		ORDER granting <u>438</u> : Plaintiffs' Motion for Extension of Time to Respond to the Order of May 2, 2014 (Doc. 437) is GRANTED. Plaintiffs have up to and including May 16, 2014, to file an amended pleading as to Count I of the Complaint. Signed on 5/5/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 05/05/2014)
05/05/2014	440		ORDER denying <u>422</u> : Plaintiffs' Motion for Leave to file Surreply Suggestions in Opposition to Motion to Dismiss is denied as moot. The Court has entered its Order on the Motion to Dismiss. Signed on 5/5/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 05/05/2014)
05/09/2014	<u>441</u>		WRIT OF CERTIORARI Denied as to Jeffrey Ferguson. 8th Circuit Case Number: 14-1693. Supreme Court Case Number: 13-9374. (Attachments: # <u>1</u> Exhibit)(Bax, Laura) (Entered: 05/09/2014)

05/16/2014	<u>442</u>		RESPONSE to order <i>PLAINTIFFS' RESPONSE TO COURT ORDER OF MAY 2, ON MOTION TO DISMISS SECOND AMENDED COMPLAINT</i> filed by Joseph Luby on behalf of Plaintiffs David M. Barnett, Russell E. Bucklew, Mark A. Christeson, Cecil Clayton, Reginald Clemons, Andre Cole, Jeffrey R. Ferguson, Joseph Paul Franklin, Paul T. Goodwin, John C. Middleton, Allen L. Nicklasson, Roderick Nunley, Earl Ringo, William Rousan, Herbert Smulls, Walter T. Storey, Leon Taylor, Michael A. Taylor, Marcellus Williams, John E. Winfield, Michael Worthington, David Zink. Reply suggestions due by 6/2/2014 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit 1 – Amicus brief (ethics) on Zink cert petition)(Luby, Joseph) Modified on 5/19/2014 (James, Carrie). (Entered: 05/16/2014)
05/16/2014	<u>443</u>	98	ORDER that Count I of Plaintiff's Second Amended Complaint is dismissed. ORDER denying as moot <u>397</u> Defendant's motion for protective order; denying as moot <u>418</u> Richard Strong's motion to intervene; denying as moot <u>419</u> Plaintiffs' motion for leave to file surreply; denying as moot <u>421</u> Marcellus Williams' motion to intervene. Signed on 05/16/14 by District Judge Beth Phillips. (Duer, Tina) (Entered: 05/16/2014)
05/16/2014	<u>444</u>	100	CLERK'S JUDGMENT entered on May 16, 2014. (Duer, Tina) (Entered: 05/16/2014)
05/22/2014	<u>445</u>		MOTION for leave to Appeal in forma pauperis filed by Joseph Luby on behalf of All Plaintiffs. Suggestions in opposition/response due by 6/9/2014 unless otherwise directed by the court. (Luby, Joseph) (Entered: 05/22/2014)
05/22/2014	<u>446</u>	101	NOTICE OF APPEAL by John E. Winfield. (Luby, Joseph) (Entered: 05/22/2014)
05/22/2014	<u>447</u>	105	ORDER granting <u>445</u> : Plaintiffs' Motion for Leave to Proceed in forma pauperis on Appeal is GRANTED. Signed on 5/22/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached. (Cordell, Annette) (Entered: 05/22/2014)
05/23/2014	<u>448</u>	108	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>446</u> Notice of Appeal. (James, Carrie) (Entered: 05/23/2014)

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DAVID ZINK, *et al.*,

Plaintiffs,

v.

GEORGE A. LOMBARDI, *et al.*,

Defendants.

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Case No. 12-04209-CV-C-BP

ORDER

This matter comes before the Court on Defendants' Motion to Dismiss Second Amended Complaint, (Doc. 354). For the reasons below, Defendants' Motion to Dismiss is **GRANTED in part** and ruling is **DEFERRED in part**.

I. Background

Plaintiffs are death row inmates who bring suit against Defendants in their official capacities for constitutional violations arising from Missouri's execution protocol. Plaintiffs filed their original Complaint in the Circuit Court of Cole County, Missouri, and Defendants removed to this Court in August 2012. Shortly thereafter, Defendants filed a motion to dismiss the original Complaint for failure to state a claim. In the original Complaint, Plaintiffs alleged cruel and unusual punishment in violation of the Eighth Amendment, violations of the Supremacy Clause, enactment of an Ex Post Facto Law, and violations of the Separation of Powers doctrine. The Court denied Defendants' motion as to Plaintiffs' Eighth Amendment and Ex Post Facto claims, and granted the motion as to the Supremacy Clause and Separation of Powers claims. (Order, Doc. 31.) Plaintiffs later sought leave to amend their pleadings, which the Court granted. The Amended Complaint incorporated several recent changes to Missouri's

execution protocol, including the use of the drug pentobarbital, and the facts surrounding the execution of Plaintiff Franklin. The First Amended Complaint set forth seven counts, which were: (1) violations of the Eighth Amendment; (2) violations of the Ex Post Facto clauses; (3) violations of the separation of power guaranty under the Missouri Constitution; (4) deprivation of liberty without due process of the law in violation of the Missouri Constitution and the Fifth and Fourteenth Amendments of the United States Constitution; (5) denial of equal protection and due process in violation of the Missouri Constitution and the Fourteenth Amendment of the United States Constitution; (6) unlawful administrative agency action remediable under the Missouri Administrative Procedure Act; (7) violation of the First Amendment of the United States Constitution and the related provision under the Missouri Constitution.

In December 2013, Defendants filed a Motion for Protective Order, (Doc. 189), to prohibit discovery or disclosure of the identities of all execution team members. After a telephone conference on the issue, the Court ordered Defendants to produce the identity of the pharmacist who compounds the pentobarbital used in executions, the laboratory that tests the compounded drug, and the doctor who prescribes the compounded drug. (Doc. 204.) Defendants filed a petition for writ of mandamus as to the Court's Order with the Eighth Circuit.

A three-judge panel granted Defendants' petition for writ of mandamus as to the identity of the prescribing physician, but denied it as to discovery of the identities of the compounding pharmacy and testing laboratory. *See In re Lombardi*, 8th Cir. No. 13-3699 (Dec. 27, 2013). On a petition for rehearing, the Eighth Circuit issued an en banc opinion vacating the Court's Orders requiring disclosure of the identities of the physician who prescribes the chemical used in Missouri executions, the pharmacist who compounds the chemical, and the laboratory that tests the chemical for potency, purity, and sterility. *In re George A. Lombardi*, 741 F.3d 888 (8th Cir.

2014) (hereinafter “*Lombardi I*”); (see also Docs. 203; 204; 205.) Relying on the Supreme Court’s decision in *Baze v. Rees*, 553 U.S. 35 (2008), the Eighth Circuit found Plaintiffs failed to state a claim under the Eighth Amendment in their original Complaint because they had not pled a known and available alternative to the current execution method, and therefore, it was a “clear abuse of discretion for the district court to allow the claim to proceed and to order on that basis discovery of sensitive information[.]” *Id.* at 896. Similarly, the Eighth Circuit found that Plaintiffs failed to properly plead their Ex Post Facto claim in the original Complaint, as the punishment has remained the same and Plaintiffs had fair notice of it. *Id.* at 896-97. The Eighth Circuit also concluded that the identities of the physician, pharmacist, and laboratory “are plainly not relevant” to Plaintiffs’ remaining claims, as “the merits of these claims do not depend on [those identities].” *Id.* at 897. Plaintiffs petitioned the Eighth Circuit for a rehearing of this decision, which was denied. *In re Lombardi*, 741 F.3d 903 (8th Cir. 2014) (hereinafter “*Lombardi II*”). Based on the Eighth Circuit’s decision and other developments in the case, Plaintiffs moved to file a second amended complaint, (Doc. 312), which this Court granted, (Doc. 339.) Plaintiffs also filed a petition for writ of certiorari with the Supreme Court regarding the Eighth Circuit’s opinion in *Lombardi I*, which was denied. See *Zink v. Lombardi*, Sup. Ct. No. 13-8435 (Apr. 7, 2014).

Plaintiffs’ Second Amended Complaint, which was filed before the petition for writ of certiorari was denied, sets forth ten counts. Defendants move to dismiss all ten counts under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiffs allege as follows:

Count I: Eighth Amendment Claim	New changes to the execution protocol, namely the use of pentobarbital, create a substantial risk of severe pain or an objectively intolerable risk of severe pain, and therefore violate the Eighth Amendment’s prohibition against cruel and unusual punishment.
Count II: Ex Post Facto Claim	The new execution protocol creates a significant risk of increased punishment in violation of the Ex Post Facto Clauses of the Missouri

	and United States Constitutions.
Count III: Deliberate Indifference Claim	Defendants' conduct surrounding executions constitutes deliberate indifference to serious medical needs in violation of the Due Process Clause of the Fourteenth Amendment, the Eighth Amendment, and the Missouri Constitution.
Count IV: Medical Malpractice Claim	Defendants ¹ are committing medical malpractice by administering, or aiding and abetting in the administration of compounded pentobarbital for the purpose of bringing about a quick death without gratuitous pain and suffering.
Count V: Intentional Infliction of Emotional Distress Claim	Defendants' use of compounded pentobarbital for executions intentionally inflicts and is tortuously inflicting emotional distress on Plaintiffs and Plaintiffs' loved ones.
Count VI: Separation of Powers Claim	Mo. Rev. Stat. § 546.720, which authorizes Defendant Lombardi to determine how the Department of Corrections carries out executions, violates the separation of powers guaranty under the Missouri Constitution.
Count VII: Due Process Claim	Defendants' conduct in obtaining execution dates has denied Plaintiffs access to the courts in violation of the Due Process Clauses of the Missouri Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.
Count VIII: Equal Protection Claim	Defendants' failure to strictly comply with the execution protocol violates Plaintiffs' Due Process and Equal Protection rights under the Fourteenth Amendment of the United States Constitution.
Count IX: MAPA Claim	The new protocol constitutes an unlawful administrative agency action remediable under the Missouri Administrative Procedure Act ("MAPA").
Count X: First Amendment Claim	Mo. Rev. Stat. § 546.720.2-4, in conjunction with the new execution protocol, violates the First Amendment of the United States and Missouri Constitutions by concealing information from the public without being narrowly tailored to serve a compelling government interest.

II. Jurisdiction

Defendants first argue the Court should dismiss this case pursuant to Fed. R. Civ. P. 12(b)(1) because the Eighth Circuit held Plaintiffs' claims on the original Complaint failed as a matter of law and should have been dismissed. They assert that, therefore, it was abuse of discretion to allow the case to continue and permit Plaintiffs to amend their complaint and allege new injuries. Defendants also argue this Court has no Article III jurisdiction because the

¹ This claim is specific to Defendants M3, M2, M5, The Apothecary Shoppe, Analytical Research Laboratories, and all John Doe defendants who are healthcare providers or allegedly functioning as healthcare providers.

protocol changed the execution drug since Plaintiffs' original Complaint was filed, and the case was moot after that change occurred. Defendants arguments rely heavily on the Eighth Circuit opinion in *Ringo v. Lombardi*, 677 F.3d 793 (8th Cir. 2012). Plaintiffs respond that the Eighth Circuit's opinion in *Lombardi I* did not address mootness. Further, they contend the Eighth Circuit would have done so if the case was moot, as mootness is a threshold issue to determine a court's jurisdiction.

Article III standing requires a plaintiff to suffer a "concrete and particularized" injury, which is "actual or imminent, not conjectural or hypothetical" and "fairly traceable to the challenged action of the defendant," such that limiting the defendant will remedy the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quotations omitted). "When a case on appeal no longer presents an actual, ongoing case or controversy, the case is moot and the federal court no longer has jurisdiction to hear it." *Ringo*, 677 F.3d at 796.

The Court agrees with Plaintiffs that if this Court lacked jurisdiction to rule on the amended complaints, the Eighth Circuit would have explicitly addressed this issue in *Lombardi I*; however, it did not do so. Rather, the Eighth Circuit stated, "[t]here is still a live controversy over whether the Director must disclose the identities [of certain execution team members] for active use by opposing counsel." ² *Lombardi I*, 741 F.3d at 893. Had the Eighth Circuit concluded it did not have jurisdiction or that the case was moot, it would not have proceeded to address the discovery issue before it. Further, the Eighth Circuit has issued opinions for all Plaintiffs who filed appeals and motions for stay of execution after both *Lombardi* decisions (Plaintiffs Smulls, Taylor, Ferguson, and Rousan), and would have addressed jurisdiction in those orders if it was an issue.

² Because the Court dismissed all counts other than the Eighth Amendment claim and the Ex Post Facto claim in the original Complaint, the Eighth Circuit must have been referring to the First Amended Complaint when stating that those identities were not relevant to the claims that remained.

As to Defendants' second argument, this case can be distinguished from *Ringo*. In *Ringo*, the plaintiffs challenged the use of a three-drug cocktail by alleging violations of the Food, Drug and Cosmetic Act and the Controlled Substances Act particular to those drugs. *Ringo*, 677 F.3d at 796. During the course of the suit, the state's provider of one of the drugs stopped producing the drug. *Id.* at 797. That supplier was the only domestic manufacturer of this drug, and the state was left with a limited supply of the drug and no way to replenish or substitute it. *Id.* The Eighth Circuit concluded that the Department of Corrections was "unable to carry out the challenged execution protocol as written," and opined that it could not reach a decision on a drug that the state had not yet identified for use in executions. *Id.* at 797-98. Because of the barriers and uncertainty surrounding the state's execution protocol, the Eighth Circuit determined that the plaintiffs had failed to establish a present, live controversy and their claims were moot.

In this case, Defendants' execution protocol can be carried out as written. Merely because they have changed the drugs used in the execution does not render this case moot. Defendants have identified the new drug to be used, and Plaintiffs were granted leave to amend their complaint to account for this change. Therefore, a live controversy is present in this case and, therefore, is not moot. *Cf. Cooley v. Strickland*, 588 F.3d 921, 923 (6th Cir. 2009) (concluding plaintiff's case was moot and vacating a stay of execution because the state had changed the lethal injection protocol to a single-drug procedure, but plaintiff's suit challenged the previous three-drug lethal injection procedure). This Court has Article III jurisdiction, and Defendants' motion is denied on this ground.

III. Analysis of Counts I-X

a. Standard of Review

Dismissal under Fed. R. Civ. P. 12(b)(6) is proper where the complaint fails to state a claim upon which relief can be granted. *Cook v. ACS State & Local Solutions, Inc.*, 663 F.3d 989, 992 (8th Cir. 2011). The complaint must allege facts sufficient to “state a claim to relief that is plausible on its face.” *Walker v. Barrett*, 650 F.3d 1198, 1203 (8th Cir. 2011) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In ruling on a motion to dismiss, the “court accepts as true all factual allegations but is not bound to accept as true a legal conclusion couched as a factual allegation.” *Cook*, 663 F.3d at 992 (quotations omitted). Finally, the court must construe all reasonable inferences in favor of the non-moving party. *Palmer v. Ill. Farmers Ins. Co.*, 666 F.3d 1081, 1083 (8th Cir. 2012).

b. Count I: Eighth Amendment Claim

Plaintiffs allege that Defendants’ use of pentobarbital from an undisclosed compounding pharmacy and use of a central line access create a substantial risk of severe pain or an objectively intolerable risk of severe pain. The pleading of this count is substantially similar to the first amended complaint, except Plaintiffs now “concede that other methods of lethal injection the Department could choose would be constitutional.” Defendants argue Plaintiffs fail to state a claim because they have not alleged that the execution procedures are “sure or very likely to cause serious illness and needless suffering.” Defendants further argue that Plaintiffs have not pled a feasible, readily available alternative that would substantially reduce a severe risk of harm. Plaintiffs respond by primarily arguing Defendants improperly heighten the pleading standard. Specifically, Plaintiffs argue they need only show that: (1) the current execution protocol creates

a “substantial risk of harm,” not that it is “sure or very likely to cause serious illness or needless suffering;” and (2) other means of lethal injections are constitutional.³

Resolution of this issue begins with analysis of *Lombardi I* and *Lombardi II*. In *Lombardi I*, the Eighth Circuit specifically acknowledged “[P]laintiffs complain that Missouri’s . . . execution protocol creates a substantial risk of severe pain or an objectively intolerable risk of severe pain, and thus constitutes cruel and unusual punishment[.]” *Lombardi I*, 741 F.3d at 895. However, the court ultimately held that Plaintiffs did not state a viable Eighth Amendment claim because they did not state “a plausible allegation of a feasible and more human alternative method of execution, or a purposeful design by the State to inflict unnecessary pain[.]” *Lombardi I*, 741 F.3d at 896. The Eighth Circuit specifically referenced the language used in Plaintiffs’ previous complaints regarding the risk and level of pain necessary to plead an Eighth Amendment violation, and gave no indication such language was insufficient. Based on that fact and the case law cited by Plaintiffs, the Court concludes Plaintiffs sufficiently plead an Eighth Amendment claim regarding the risk and level of pain that the current execution protocol carries.

In *Lombardi II*, the Eighth Circuit addressed Plaintiffs’ argument that the ruling regarding the pleading standard in *Lombardi I* conflicted with the Supreme Court’s rulings in *Baze v. Rees*, 585 U.S. 35 (2008) and *Hill v. McDonough*, 547 U.S. 573 (2006). The Eighth Circuit reiterated the pleading standard set out in *Lombardi I*, differentiated the facts at hand from those in *Hill*, and expressly declined to address “whether alleging that the current method of execution creates a substantial risk of harm when compared to known and viable alternatives,

³ Throughout their Opposition to the Motion to Dismiss, Plaintiffs repeatedly argue the Court’s earlier ruling that amendment of the original complaint would not be futile is equivalent to a ruling that the claims survive a motion to dismiss. (See Doc. 181.) This argument is misguided. The ruling regarding futility was made in the context of a discussion as to whether Article III jurisdiction continued to an amended complaint filed after the execution protocol changed from the use of propofol to pentobarbital. In addition, the ruling was made with no notice as to what claims Plaintiffs would include in their amended complaint. Further, the ruling was made prior to the filing of the first amended complaint. The second amended complaint is the subject of this Motion to Dismiss.

without specifying an alternative, would be sufficient to state a claim in light of *Hill* and *Baze*. Cf. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).” *Lombardi II*, 741 F.3d at 905. Important to this Court’s analysis, and in contradiction to Plaintiffs’ argument that *Lombardi II* narrows the holding of *Lombardi I*, is the citation following the above quote. The full text of the opinion compares the language used in *Hill* and *Baze* to the pleading standard set out in *Iqbal*, a case decided after both *Hill* and *Baze*.

Therefore, this Court must decide whether conceding “that other methods of lethal injection the Department could choose to use would be constitutional,” without specifying an alternative, is sufficient to state an Eighth Amendment claim. Since the Supreme Court’s decision in *Iqbal*, the Eighth Circuit has held that a complaint must allege facts sufficient to “state a claim to relief that is plausible on its face.” *Walker v. Barrett*, 650 F.3d 1198, 1203 (8th Cir. 2011) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To sufficiently plead a plausible claim, the factual content of the claim must allow “the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Horras v. Am. Capital Strategies*, 729 F.3d 798, 801 (8th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678)). “Labels and conclusions,” “formulaic recitations of the elements of a cause of action,” and “naked assertions devoid of further factual enhancement” are not sufficient pleadings to survive a motion to dismiss. *Id.* (quoting *Twombly*, 550 U.S. at 557).

Allegations that “concede that other methods of lethal injection the Department could choose would be constitutional” do not permit the Court to draw a reasonable inference that: (1) there is a reasonably available alternative; and (2) the alternative is less likely to create a substantial risk of harm. Plaintiffs’ language is simply a naked assertion. Without factual allegations permitting the Court to determine whether the alleged alternative method is

reasonably available and less likely to create a substantial risk of harm, Plaintiffs have not stated a plausible claim for violations of the Eighth Amendment.

The Court next considers whether to permit Plaintiffs to amend Count I to properly plead an Eighth Amendment claim consistent with *Lombardi I* and *II*. The Court firmly believes that *Lombardi I* placed Plaintiffs on ample notice of the proper pleading standard for an Eighth Amendment claim. *Lombardi II* simply reinforced existing law. Further, it is unclear to the Court why Plaintiffs would choose to not include the proper language. The Court surmises that either they cannot meet the proper standard or they were improperly convinced that the petition for writ of certiorari would be granted. In the event that the reasoning lies with the latter possibility, and in an effort to give Plaintiffs every opportunity to properly plead their claim, the Court will give Plaintiffs seven days from the date of this Order to amend only Count I of the Second Amended Complaint to comply with the pleading standard described herein.

c. Count II: Ex Post Facto Claim

Plaintiffs allege Defendants' change to the execution protocol and intended use of compound pentobarbital inflicts a greater quantity of pain and suffering, and a greater likelihood of harm than existed under the preexisting law, such that there is a significant risk of increased punishment in violation of the Ex Post Facto Clause. In their Motion to Dismiss, Defendants contend: (1) the execution protocol is not a rule, but rather an exercise of discretion, and therefore does not apply to changes in modes of procedure that do not alter substantive rights; and (2) Plaintiffs do not have an Ex Post Facto claim independent of the Eighth Amendment.

Ex post facto laws change the law, post-conviction, such that it disadvantages the defendant. *R.W. v. Sanders*, 168 S.W.3d 65, 68 (Mo. 2005); *see also Collins v. Youngblood*, 497 U.S. 37, 41 (1990) (“[T]he constitutional prohibition on ex post facto laws applies only to penal

statutes which disadvantage the offender affected by them.”) (emphasis omitted); *Williams v. Hobbs*, 658 F.3d 842, 848 (8th Cir. 2011) (an ex post facto claim must allege that a new law or regulation “creates a significant risk of increased punishment.”) (quotation omitted).

A change in the execution protocol does not alter Plaintiffs’ substantive rights. As the Eighth Circuit articulated in *Lombardi I* regarding Plaintiffs’ original Complaint:⁴

The manner of punishment for capital murder in Missouri at all relevant times, however, has been death by lethal injection or lethal gas, with discretion granted to the Director of the Department of Corrections to establish the method of execution. The plaintiffs were on fair notice of this discretion when they committed their crimes, and the discretion was not later removed [P]laintiffs do not allege that the Director, in the exercise of his discretion, has employed anything other than the most humane method of execution available. That a former method of execution is no longer available does not mean that adoption of the next best method is an unconstitutional increase in punishment. The punishment—death—has not changed. The prisoners had fair notice of that punishment, and of the Director’s discretion to determine the method of execution, when they committed their crimes. Where “only the mode of producing” death has changed, with no allegation of superadded punishment or superior alternatives, the Ex Post Facto Clauses are not implicated.

741 F.3d at 896-97 (internal citations omitted). The same is true for Plaintiffs’ Second Amended Complaint. Therefore, Plaintiffs have not stated an Ex Post Facto claim, and dismissal is proper for this count.

d. Count III: Deliberate Indifference Claim

Plaintiffs allege that Defendants are deliberately indifferent to Plaintiffs’ medical need to have a rapid death free of gratuitous pain and suffering by: (1) using compounded drugs that create serious risks of harm; (2) using outdated drugs; and (3) failing to take reasonable measures to address known deviations from Defendants’ protocol. Defendants argue that an execution is not a medical procedure and, therefore, Plaintiffs’ do not make a plausible claim.

⁴ Plaintiffs’ original Complaint set forth similar allegations, differing only because Plaintiffs then challenged Defendants’ use of lidocaine and propofol as the execution drugs.

“[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain . . . proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (quotation omitted); *see also Nelson v. Campbell*, 541 U.S. 637, 644-47 (2004) (discussing claims for deliberate indifference in a death penalty context). The Eighth Circuit has stated that because the death penalty is “a deliberate act, deliberately administered for a penal purpose,” the primary inquiry is whether the death penalty protocol as written would inflict unnecessary pain. *Taylor v. Crawford*, 487 F.3d 1072, 1081 (8th Cir. 2007). However, it has also noted that when the conduct challenged is alleged to be accidental or a deviation from the official procedure, a plaintiff must show an intent to harm or deliberate indifference. *Id.*

Defendants are not addressing Plaintiffs’ medical needs when carrying out executions. *See* Section III-e (explaining that medical treatment requires taking measures to ensure physical well-being). Rather, they are following their duties under the law and imposing Plaintiffs’ sentences. Moreover, Plaintiffs have not properly pled an Eighth Amendment claim and, therefore, they have not pled that the protocol as written inflicts unnecessary pain in violation of the Eighth Amendment. Plaintiffs only have a right to be free of unnecessary pain and suffering, not to be free from all pain. *See Clemons v. Crawford*, 585 F.3d 1119, 1125 (8th Cir. 2009). As such, Plaintiffs fail to state a deliberate indifference claim, and dismissal is proper for this count.

e. Count IV: Medical Malpractice Claim

Plaintiffs allege that Defendants M2, M3, M5, The Apothecary Shoppe, Analytical Research Laboratories, and all John Does defendants who are healthcare providers or allegedly functioning as such are committing medical malpractice by administering, or aiding and abetting in the administration of, substandard drugs. Defendants again argue that an execution is not a

medical procedure and, therefore, Plaintiffs have not stated a claim upon which relief can be granted.

In Missouri, a claim for medical malpractice requires a showing that: “(1) an act or omission of the defendant failed to meet the requisite medical standard of care; (2) the act or omission was performed negligently; and (3) the act or omission caused the plaintiff’s injury.” *Mueller v. Bauer*, 54 S.W.3d 652, 656 (Mo. Ct. App. 2001). Missouri has defined medical treatment for purposes of medical malpractice claims as “measures necessary for the physical well being of the patient” and “covering all the steps taken to effect a cure of an injury or disease[,] including examination and diagnosis as well as application of remedies.” *Cole v. Ferrell-Duncan Clinic*, 185 S.W.3d 740, 744-45 (Mo. Ct. App. 2006) (quotations and emphasis omitted).

Plaintiffs are not receiving medical treatment that would give rise to a medical malpractice claim because Plaintiffs have not alleged Defendants are taking measures to ensure their physical well-being or affect a cure for an injury or disease. In fact, Plaintiffs allege Defendants are doing the opposite in carrying out executions. Therefore, Plaintiffs fail to state a medical malpractice claim, and dismissal is proper for this count.

f. Count V: Intentional Infliction of Emotional Distress

Plaintiffs allege Defendants are intentionally or recklessly engaging in extreme and outrageous conduct by compounding, dispensing, and administering compounded pentobarbital. Specifically, Plaintiffs allege Defendants are intentionally and offensively touching Plaintiffs without their consent, and intend to cause pain and suffering or are deliberately indifferent to their pain and suffering, causing emotional distress to Plaintiffs due to the prospect of a painful death. Defendants argue they are carrying out lawful executions in accordance with their duties

under state law, and such conduct cannot support a claim for intentional infliction of emotional distress.

To state a claim for intentional infliction of emotional distress in Missouri, a plaintiff must plead: (1) the defendant acted intentionally or recklessly; (2) the defendant's conduct was extreme and outrageous; and (3) the conduct was the cause of severe emotional distress. *Hyatt v. Trans World Airlines, Inc.*, 943 S.W.2d 292, 297 (Mo. Ct. App. 1997). For the first element, a plaintiff must plead that defendants' "sole intent in acting was to cause emotional distress." *Kan. City Laser, Inc. v. MCI Telecomm. Corp.*, 252 Fed. App'x. 100, 104 (8th Cir. 2006) (quoting *Cent. Mo. Elec. Coop. v. Balke*, 119 S.W.3d 627, 636 (Mo. Ct. App. 2003)). For the second element, extreme and outrageous conduct is defined as conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Gibson v. Brewer*, 952 S.W.2d 239, 249 (Mo. 1997) (quotation omitted). Moreover, causation requires pleading that the alleged emotional distress is "medically diagnosable and medically significant." *Kan. City Laser, Inc.*, 252 Fed. App'x. at 103-04 (quoting *Hendrix v. Wainwright Indus.*, 755 S.W.2d 411, 412 (Mo. Ct. App. 1988)).

First, Plaintiffs have not sufficiently pled that Defendants' sole intent in executing Plaintiffs is to inflict emotional distress. Second, Defendants' conduct is not extreme or outrageous, as they are carrying out their duties under state law. They cannot be engaging in conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community," because their acts were contemplated and implemented by the state legislature. *Gibson*, 952 S.W.2d at 249. Third, Plaintiffs have failed to plead that the emotional distress they

suffer is medically diagnosable or medically significant. To the extent that Plaintiffs allege a claim for negligent infliction of emotional distress, it also fails because Defendants are not acting negligently but rather carrying out their duties under state law. *See Jarrett v. Jones*, 258 S.W.3d 442, 446 (Mo. 2008) (discussing negligent infliction of emotional distress). Therefore, Plaintiffs have failed to state a claim for intentional or negligent infliction of emotional distress, and dismissal is proper for this count.

g. Count VI: Separation of Powers Claim

Plaintiffs allege that Defendant Lombardi has acted beyond the discretion afforded to him under Mo. Rev. Stat. § 546.720.2. Specifically, Plaintiffs allege that the new protocol's redefinition of the execution team to include testing laboratories, as well as the compounding pharmacy and pharmacist, was an exercise in law-making power that the General Assembly did not confer on Defendant Lombardi. As such, Plaintiffs allege a violation of Missouri's separation of powers guaranty. Defendants argue Plaintiffs do not sufficiently plead this claim, and urge the Court to dismiss this claim as it did in the original Complaint. Plaintiffs contend that this separation of powers claim is radically different from the one pled in the original Complaint because it regards Defendant Lombardi's discretion to choose the execution team under Mo. Rev. Stat. § 546.720.2.⁵ Plaintiffs also contend that the Court's prior holding that this statute did not "prohibit the disclosure of identities of the compounding pharmacist, investigative laboratory, and prescribing physician," (Doc. 230), shows they sufficiently plead this claim.

"[T]he doctrine of separation of powers may be violated when one branch assumes a power that more properly is entrusted to another." *State Auditor v. Joint Comm. on Legislative Research*, 956 S.W.2d 228, 231 (Mo. 1997) (internal marks and quotation omitted). However,

⁵ In the original Complaint, Plaintiffs alleged a separation of powers claim because the legislature had unconstitutionally delegated their authority to choose the execution drug to Defendant Lombardi under Mo. Rev. Stat. § 546.720.1.

the power of Missouri's state legislature is plenary. *Bergman v. Mills*, 988 S.W.2d 84, 89 (Mo. Ct. App. 1999) ("except for restrictions imposed by the Missouri constitution and statutes enacted by the General Assembly, the power of the state legislature is unlimited and practically absolute."). While the legislature's power to make laws may not be delegated, *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 299 (Mo. 1996), it does have the power to delegate its authority, "even that which involves an exercise of discretion." *Bergman*, 988 S.W.2d at 89. An unconstitutional delegation to make law "involves a discretion as to what the general law will be," whereas a constitutional delegation of authority involves "conferring an authority or discretion as to how the law shall be executed." *Akin*, 934 S.W.2d at 299.

Here, the Missouri legislature properly delegated its authority to choose members of the execution team to Defendant Lombardi. Defendant was not delegated any law-making power to determine what the general manner of execution will be, or whether to enact or repeal Mo. Rev. Stat. § 546.720. Rather, Defendant has only the discretion to pick members of the execution team. Defendant's decision to add the testing laboratory, compounding pharmacy, and pharmacist to the execution team is a constitutional exercise in discretion as to how Mo. Rev. Stat. § 546.720, the law governing the manner of Missouri's executions, will be carried out. This decision does not exceed Defendant's delegated authority and is not engaging in law-making, so it is thus not a violation of the separation of powers guaranty. Therefore, Plaintiffs have failed to state a separation of powers claim, and dismissal is proper for this count.

h. Count VII: Due Process Claim

Plaintiffs allege that Defendants' recent successive changes to the execution protocol and setting of execution dates shortly thereafter has denied them a reasonable opportunity to be heard and access to the courts in violation of the Due Process Clauses of the Missouri Constitution and

the Fifth and Fourteenth Amendments of the United States Constitution. Defendants argue these changes were necessary due to supply interruptions and threats of boycotts by death penalty opponents and, thus, do not violate Plaintiffs' due process rights. Additionally, Defendants contend that *Williams v. Hobbs*, 658 F.3d 842 (8th Cir. 2011), which rejected a similar access-to-the-courts claim, is controlling. Plaintiffs argue *Williams* is distinguishable because the director in that case made no changes to the execution protocol and the plaintiffs' claim was based purely on speculation as to what violations might occur if any changes to the protocol were implemented.

Due process ensures "the right to (a) notice, (b) a meaningful opportunity to be heard, and (c) a fair and impartial process which is appropriate to the nature of the case." *Gross v. Carter*, 265 F. Supp. 2d 995, 1001 (W.D. Ark. 2003) (citing *LaChance v. Erickson*, 522 U.S. 262, 266 (1998)). While prisoners "have a constitutional right of access to the courts," the Due Process Clause does not "enable the prisoner to discover grievances, and to litigate effectively once in court." *Williams*, 658 F.3d at 851-52 (quotations and emphasis omitted). Specifically, the right to access to the courts affords only "the capability of bringing contemplated challenges to sentences or conditions of confinement[.]" *Lewis v. Casey*, 518 U.S. 343, 356 (1996). "[I]mpairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.* at 355 (emphasis omitted).

While Defendants' changing of the protocol and setting execution dates close in time to those changes may have hindered Plaintiffs' ability to discover grievances and effectively litigate any challenge to the protocol, Defendants have not obstructed Plaintiffs' capability to file a suit. This lawsuit itself is evidence of Plaintiffs' ability to challenge the protocol. Additionally, Plaintiffs' misinterpret *Williams*. Plaintiffs' argument is based on the court's Ex Post Facto

analysis in *Williams*, which differs from and was not incorporated into the Eighth Circuit's access-to-the-courts discussion. In *Williams*, the Eighth Circuit specifically held that the plaintiffs' ability to bring a lawsuit to challenge the state's execution proceedings belied their claim, in that it showed they still had access to the courts to challenge the execution protocol even though the protocol was not disclosed to them. *Id.* at 852 (also noting *Giarratano v. Johnson*, 521 F.3d 298, 305-06 (4th Cir. 2008), where a prison system's outright refusal to provide a medical protocol did not make a prisoner's challenge impossible, but rather "just made it more difficult."). The same circumstances exist here. Therefore, Plaintiffs fail to state a plausible due process claim, and dismissal is proper for this count.

i. Count VIII: Equal Protection Claim

Plaintiffs allege Defendants' failure to strictly follow the execution protocol denies them equal protection of the laws and deprives them of life and liberty without due process of the law. Plaintiffs specifically allege that by moving Plaintiffs from their holding cells to the execution chamber while there is pending legal activity that would prevent the executions, Defendants have failed to follow the protocol and affected their Eighth Amendment rights. Defendants argue Plaintiffs have implausibly read the protocol. They contend the written procedures allow the Director of the Department of Corrections to authorize whether an execution should move forward despite the existence of pending legal activity.

A deviation from an execution protocol burdens or affects a prisoner's equal protection rights when it violates a "core provision" of an execution procedure or protocol. *See In re Ohio Execution Protocol Litig.*, 840 F. Supp. 2d 1044, 1054-55 (S.D. Ohio 2012). Core provisions are those pertaining to properly administering and carrying out the executions of inmates, such as: (1) preparation of the execution drugs; (2) preparation of the inmate for administration of the

drugs; (3) the manner of administration of the drugs; and (4) who participates in the execution. *Cooey v. Kasich*, 801 F. Supp. 2d 623, 645-50 (S.D. Ohio 2011); *see also In re Ohio Execution Protocol Litig.*, 840 F. Supp. 2d 1044 (holding defendants did not substantially comply with the execution procedure for violations similar to those alleged in *Cooey*). Additionally, a viable Equal Protection claim requires “an actual pattern of treating prisoners differently in ways that did affect the risk of pain to which they would be subjected, and therefore the risk of being subjected to cruel and unusual punishment.” *Towery v. Brewer*, 672 F.3d 650, 660 (9th Cir. 2012) (emphasis omitted).

Plaintiffs have failed to state an Equal Protection claim. Moving inmates while there is pending legal activity is not a core provision of the written procedures that would constitute a “significant” change of the execution protocol. *See, e.g., Powell v. Thomas*, 643 F.3d 1300, 1304-05 (11th Cir. 2011) (discussing changes in protocol with regard to a statute of limitations bar for Eighth Amendment claims and concluding that substituting the lethal injection drug did not constitute a significant change in the execution protocol). Moreover, Defendants’ failure to follow the provision regarding moving inmates to the execution chamber does not affect Plaintiffs’ Eighth Amendment rights, as it does not affect the risk of pain to which Plaintiffs may be subjected. *Towery*, 672 F.3d at 660 (“Treating one similarly situated prisoner differently from another with regard to punishment does not inherently impact the right to be free of cruel and unusual punishment[.]”). Deviations from the protocol in the manner alleged by Plaintiffs do not violate a fundamental right, and Plaintiffs have not suffered a violation of their Equal Protection rights. *See Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976) (when there is no interference with fundamental rights sufficient to trigger strict scrutiny, there is no Equal Protection claim).

Therefore, Plaintiffs have failed to state an Equal Protection claim, and dismissal is proper for this count.

j. Count IX: MAPA Claim

Plaintiffs allege Defendants have violated numerous laws that are remediable under MAPA. Specifically, they allege: (1) Defendants violate the Drug Quality and Security Act, Oklahoma pharmacy regulations, and Missouri pharmacy regulations by making and using compounded pentobarbital with non-FDA approved ingredients; (2) Defendants' solicitation, provision, and acceptance of a prescription for pentobarbital violates the Controlled Substances Act ("CSA") and the Food, Drug and Cosmetic Act ("FDCA"); and (3) Defendants' addition of the compounding pharmacy and other companies, such as execution drug suppliers and the testing laboratory, to the execution team violates the Missouri and United States Constitutions. Plaintiffs further allege the foregoing conduct is unlawful, unreasonable, arbitrary or capricious, or involves an abuse of discretion. Defendants argue Plaintiffs fail to state a claim because the FDCA, CSA, and Missouri pharmacy regulations are not provisions that might be privately enforced in a civil rights suit, and the provisions do not apply in the context of lawful executions.

Under MAPA, a court may review a decision by an agency or board in a contested case. *Krentz v. Robertson*, 228 F.3d 897, 904 (8th Cir. 2000); Mo. Rev. Stat. § 536.150. A contested case is one where a proceeding is held and the agency determined the "legal rights, duties or privileges" of any person. *Krentz*, 228 F.3d at 904.

While MAPA does allow for judicial review of an agency or board's decision or enforcement of a regulation, Plaintiffs have not pled that the Missouri or Oklahoma Boards of Pharmacy have made any decisions or taken any enforcement action that this Court would have jurisdiction to review. Aside from reviewing Plaintiffs' complaint, the Missouri Board of

Pharmacy did not hold a hearing or make any decision determining Plaintiffs' legal rights, duties or privileges; rather, they declined to take any further action regarding the compounding pharmacies. (Doc. 338-39.) Moreover, the Missouri Board of Pharmacy noted that it "does not have jurisdiction over entities that obtain medication, but only over the people and entities that dispense or distribute prescriptions in [Missouri]." (*Id.*) Similarly, the Oklahoma Board of Pharmacy would never make a determination regarding Plaintiffs' legal rights, duties, or privileges, as it only has jurisdiction to regulate pharmacies and pharmacists. Therefore, their decisions are not reviewable by this Court. Moreover, both the Missouri Supreme Court and Oklahoma Supreme Court have held that their state's legislatures did not intend the state's respective administrative procedures acts to extend to the operating procedures of the Department of Corrections. *Middleton v. Mo. Dept. of Corr.*, 278 S.W.3d 193, 195-96 (Mo. 2009); *Lockett v. Evans*, 2014 WL 1632235, *4 (Okla. 2014).

Neither the CSA nor the FDCA create a private right of action, as Congress did not explicitly provide one or intend to imply one in either act. *See Ringo v. Lombardi*, 2010 WL 3310240, *2 (W.D. Mo. Aug. 19, 2010) (citing *Buckman Co v. Plaintiff's Legal Comm.*, 531 U.S. 341, 349 (2001) (stating the FDCA does not create a private cause of action) and *McCallister v. Purdue Pharma L.P.*, 164 F. Supp. 2d 783, 793 (S.D.W.Va. 2001)). Moreover, courts have held that when a plaintiff seeks a declaratory judgment that would cease alleged violations of the CSA and FDCA, it constitutes a prohibited private enforcement action. *Durr v. Strickland*, 2010 WL 1610592, *4 (S.D. Ohio Apr. 15, 2010) (stating that "the only injury that the declaratory relief sought here actually informs is whether defendants would be acting in technical violation of federal law" and potentially subjected defendants to federal charges). Here, Plaintiffs are requesting the Court find that Defendants are violating the FDCA and the

CSA. Such a decision would constitute private enforcement of statutes that do not have a private right of action. Additionally, Missouri statutes and regulations regarding pharmacies do not provide for enforcement of those regulations by private individuals, and so the Court can similarly conclude that the legislative intent was to leave enforcement of violations of Missouri's pharmacy regulations to its Board of Pharmacy. *See Mo. Hosp. Ass'n*, 731 S.W.2d at 264 (analyzing Missouri pharmacy regulations and related statutes to determine the legislature did not intend Chapter 338 of Missouri's Revised Statutes bestow authority to regulate hospital practices and procedures).

With regards to whether the alleged conduct is unconstitutional, unlawful, unreasonable, arbitrary, or capricious, or involves an abuse of discretion, the Court has previously concluded that this is not a contested case, as no board or agency has rendered a decision affecting Plaintiffs' legal rights, duties, or privileges. *See Mo. Rev. Stat. § 536.150.1*. Thus, the alleged conduct is not reviewable by this Court under MAPA. Therefore, Plaintiffs have failed to state a MAPA claim, and dismissal is proper for this count.

k. Count X: First Amendment Claim

Plaintiffs' last claim alleges that Defendants violated their Missouri and United States constitutional rights, as well as those of the public, the press, colleagues and patients of health professionals who are execution team members, and trade and professional associations, to: (1) access the identities of execution team members; (2) freedom of expression with that information; and (3) petition the government for redress of grievances with that information. Plaintiffs argue that the identities of persons involved in Missouri's executions are relevant to the "evolving standards of decency" within the meaning of the Eighth Amendment. Specifically, they contend Defendants' failure to disclose identities prevents Plaintiffs and the public from

forming and expressing opinions about the execution team and Missouri's execution methods. The Court concludes that Plaintiffs' claim fails for the following reasons.

First, Plaintiffs seek access to government-held information, in order to later use that information to petition the government and engage in expression regarding Missouri's execution protocol. However, Plaintiffs set forth no binding authority suggesting they have a right to access the otherwise confidential identities of execution team members. Further, Plaintiffs are not in lawful possession of this information, or in the business of publishing and publicizing such information, and did not have to cease disseminating once-public information to comply with Mo. Rev. Stat. § 546.720. "[T]his is not a case in which the government is prohibiting a speaker from conveying information that the speaker already possesses." *Los Angeles Police Dep't v. United Reporting Pub. Corp.*, 528 U.S. 32, 40-41 (1999) (finding plaintiff could not raise a facial challenge to California statute limiting access to arrestee addresses to commercial users, and plaintiff's claim is properly analyzed as a content-based restriction on access to government information, not on protected speech); *cf. Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2665-66 (2011) (finding Vermont's statute restricting sale, disclosure, and use of pharmacy records revealing prescribing practices of individual doctors was a content- and speaker-based "restriction on access to information in private hands" that burdened protected speech in violation of the First Amendment). Plaintiffs have thus not properly pled that they have an initial right to access the identities of the execution team, or that their rights to speech or expression are implicated under the circumstances of this case. *Sorrell*, 131 S. Ct. at 2665-66 ("An individual's right to speak is implicated when information he or she possesses is subjected to restraints on the way in which the information might be used or disseminated.") (internal quotation omitted).

Similarly, the right to petition the government is not absolute, *see McDonald v. Smith*, 472 U.S. 479, 484-85 (1985), and this claim hinges on Plaintiff's failed right-to-access and expression claims. In addition, Plaintiffs have not shown they may bring these claims on behalf of parties not before the Court—such as the press, colleagues, and patients of health professionals who are execution team members, or trade and professional associations—for circumstances not before the Court.

Second, Plaintiffs fail to plead a remedy redressing any of these alleged First Amendment violations. Plaintiffs request that the Court declare their First Amendment rights were violated, and as a result provide injunctive relief preventing defendants from executing them under the current lethal-injection protocol. However, even if accepted as pleaded, this count does not entitle Plaintiffs to this requested relief, nor would this relief adequately and properly redress wrongs under the First Amendment.

Therefore, Plaintiffs fail to state a First Amendment claim for which relief may be granted, and dismissal is proper for this count.

IV. Conclusion

Accordingly, Defendants' Motion to Dismiss, (Doc. 354), is **GRANTED** for Counts II through X. The Court **DEFERS RULING** on Count I. Plaintiffs are permitted to amend only Count I to comply with the pleading standard described herein within seven (7) days of the date of this Order. Further, because no viable claims are currently pending before the Court, all discovery is **STAYED**.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, JUDGE
UNITED STATES DISTRICT COURT

DATE: May 2, 2014

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DAVID ZINK, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 12-4209-CV-C-BP
)	
GEORGE A. LOMBARDI,)	
)	
Defendants.)	

ORDER

This matter comes before the Court on Plaintiffs' Response to the Court's Order of May 2, 2014. (Doc. 442.) On May 2, 2014, the Court entered an Order dismissing Counts II through X of Plaintiffs' Second Amended Complaint for failure to state viable claims. (Doc. 437.) The Court also concluded that Plaintiffs failed to properly plead Count I, their Eighth Amendment claim, as they did not provide a known and feasible alternative method of execution. (*Id.*, pp. 7-10.) However, the Court permitted Plaintiffs to amend Count I to comply with the proper pleading standard. (*Id.*, p. 10.)

On May 16, 2014, Plaintiffs filed their Response. Plaintiffs did not re-plead their Eighth Amendment claim; rather, they stated:

Plaintiffs respectfully disagree with the Court's ruling that Plaintiffs must propose an alternative means of execution in order for their Eighth Amendment claim to be viable, and Plaintiffs decline to do so. Unless the Court has changed its view, Plaintiffs respectfully request that the Court resolve the remainder of the motion to dismiss so that Plaintiffs may promptly pursue appropriate appellate remedies.

(Doc. 442, p. 3.) The Court has not changed its view. Plaintiffs' Eighth Amendment claim, as it stands now, fails to properly plead a known and feasible alternative. (*See* Doc. 437, pp. 7-10.)

Because Plaintiffs fail to state a viable Eighth Amendment claim and decline to amend their pleadings, dismissal is proper at this time.

Accordingly, Count I of Plaintiffs' Second Amended Complaint is hereby **DISMISSED**. Therefore, Defendant's Motion for Protective Order, (Doc. 397); Plaintiffs' Motion for Leave to File Surreply, (Doc. 419); Richard Strong's Motion to Intervene, (Doc. 418); and Marcellus Williams' Motion to Intervene, (Doc. 421), are **DENIED as moot**. This case is hereby **DISMISSED**.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, JUDGE
UNITED STATES DISTRICT COURT

DATE: May 16, 2014

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

David Zink, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 12-4209-CV-C-BP
)	
George A. Lombardi, et al.,)	
)	
Defendants.)	

JUDGMENT IN A CIVIL CASE

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Defendants' Motion to Dismiss, (Doc. 354), is granted for Counts II through X of Plaintiff's Second Amended Complaint. [Order dated May 2, 2014.]

Count I of Plaintiffs' Second Amended Complaint is dismissed. This case is hereby dismissed. [Order dated May 16, 2014.]

May 16, 2013

ANN THOMPSON
CLERK OF COURT

/s/ Tina Duer
by Tina Duer, Courtroom Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DAVID ZINK, et al.,

Plaintiffs,

v.

GEORGE A. LOMBARDI, et al.,

Defendants.

No. 2:12-CV-4209

NOTICE OF APPEAL ON BEHALF OF ALL PLAINTIFFS

Notice is hereby given that all Plaintiffs in this matter, other than those who have been executed, hereby appeal to the United States Court of Appeals for the Eighth Circuit, from this Court's orders and final judgment dismissing the second amended complaint, specifically ECF Doc. 437 (dated May 2, 2014), ECF Doc. 443 (dated May 16, 2014), and ECF Doc. 444 (dated May 16, 2014).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded for transmission via Electronic Case Filing (ECF) this 22nd day of May, 2014, to Michael J. Spillane, Stephen D. Hawke, Susan D. Boresi, David J. Hansen, and Andrew T. Bailey, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65101.

/s/ Joseph W. Luby

*Counsel for Plaintiffs Winfield
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Subject:Activity in Case 2:12-cv-04209-BP Zink et al v. Lombardi et al Order on Motion for Leave to Appeal in forma pauperis

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U.S. District Court

Western District of Missouri

Notice of Electronic Filing

The following transaction was entered on 5/22/2014 at 4:19 PM CDT and filed on 5/22/2014

Case Name: Zink et al v. Lombardi et al

Case Number: 2:12-cv-04209-BP

Filer:

WARNING: CASE CLOSED on 05/16/2014

Document Number: 447(No document attached)

Docket Text:

ORDER granting [445]: Plaintiffs' Motion for Leave to Proceed in forma pauperis on Appeal is GRANTED. Signed on 5/22/2014 by District Judge Beth Phillips. This is a TEXT ONLY ENTRY. No document is attached.(Cordell, Annette)

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U. S. COURT OF APPEALS - EIGHTH CIRCUIT
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Caption: David Zink et al v. George Lombardi et al
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12-4209-CV-C-BP

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Length of Trial:	Fee:	IFP:	Pending IFP Mot.
n/a	IFP	yes	no

Counsel:	Pending Motions	Local Interest	Simultaneous Release?
		YES	NO

Criminal Cases/Prisoner Pro Se Cases only:

Is defendant incarcerated?

Where?

Yes

Bonne Terre

Special comments: Death Penalty case – appeal of order dismissing the second amended complaint, specifically ECF Doc 437 (dated May 2, 2014), ECF Doc. 443 (dated May 15, 2014), and ECF Doc 444 (dated May 15, 2014).